



Key concerns and recommendations on the protection of fundamental rights in Azerbaijan

February 2020

This briefing paper was prepared by International Partnership for Human Rights (IPHR), the European Human Rights Advocacy Centre (EHRAC) and the Human Rights Club (HRC). It provides an overview of current key issues with respect to freedom of association, freedom of peaceful assembly and freedom of expression and the media, the protection of the legal profession, as well as the implementation of judgments of the European Court of Human Rights (ECtHR) in Azerbaijan. The briefing paper was finalized on 12 February 2020.

International Partnership for Human Rights (IPHR) is an independent, non-governmental organization founded in 2008. Based in Brussels, IPHR works closely together with civil society groups from different countries to raise human rights concerns at the international level and promote respect for the rights of vulnerable communities in repressive environments.

The European Human Rights Advocacy Centre (EHRAC) is an apolitical legal NGO housed within Middlesex University Law School which advances the protection of human rights in Russia, Ukraine, Armenia, Georgia and Azerbaijan. Working with more than 16 local partners EHRAC uses a unique method of joint litigation to bring strategic cases to the European Court of Human Rights and other international bodies to challenge impunity for human rights violations and build the capacity of their partners to seek justice from international bodies. EHRAC's method of joint litigation creates a unique and in-depth mentoring experience for partner lawyers as they are supported to explore new legal arguments and address violations of the European Convention on Human Rights which they may not have litigated before. EHRAC also carries out bespoke in-country training, study visits to Strasbourg and regional seminars. EHRAC's expertise and partnerships in the target region, along with their extensive experience litigating cases at the European Court of Human Rights and other international bodies, puts them in a unique position to impact human rights in the region and strengthen the ability of local civil society to do the same. Each judgment EHRAC secures contributes to an objective account of human rights abuse that cannot be refuted.

Human Rights Club (HRC) was founded on Human Rights Day (10 December) in 2010 by a group of young Azerbaijani human rights defenders. The main aim of the HRC is to promote protection of and respect for human rights and fundamental freedoms, and broader democratic development in Azerbaijan. The HRC monitors human rights developments in the country, conducts investigations into reports of violations, campaigns on cases of concern, and engages in advocacy on the national, regional, and international level. The HRC's main target groups are youth, human rights defenders, journalists, bloggers, and civic and political activists, as well as other individuals whose rights are infringed. The HRC draws attention to problems in the field of human rights among the local and international community via various campaigns. Sing for Democracy, the Online Expression Initiative, Art for Democracy, and the Working Group on the Unified List of Political Prisoners are among these activities.

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Introduction

Since the previous EU-Azerbaijan Human Rights Dialogue in February 2019, the overall human rights situation has not improved in Azerbaijan. Serious concerns remain about pervasive violations of the fundamental freedoms of expression, association and assembly, and the state persecution of government critics and perceived critics continues. The crackdown on the independent legal profession also continues, and human rights lawyers are subject to disciplinary sanctions, including disbarment for speaking out about violations in their clients' cases. Problems persist in both legislation and implementation with respect to ensuring compliance with national and international human rights standards and obligations.

In a positive and unexpected development, on 16 March 2019, 51 political prisoners were released from prison after the president pardoned them in connection with the Novruz celebrations.¹ Those released include journalists, bloggers, youth activists, protest participants and others who were imprisoned after peacefully exercising their constitutional rights. In a joint statement,² IPHR and the HRC welcomed the releases, but said that these individuals should never have been detained and prosecuted in the first place. IPHR and the HRC also regretted that several dozen other political prisoners remain behind bars, including several journalists (see more in the chapter on Freedom of Expression and Media below). In addition, some of those detained in retaliation for their exercise of fundamental rights who have previously been released continue to be subject to travel bans and other measures restricting their ability to carry out their journalism, human rights and other activities. In a statement welcoming the March 2019 releases, the EU reminded the Azerbaijani authorities that it “expects that further similar steps will follow in future in line with Azerbaijan’s international commitments.”³

The ECtHR has found violations in a number of cases relating to the escalating crackdown on civil society that began in Azerbaijan in 2014 and has also pointed to “a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law”.⁴ In September 2019, the Committee of Ministers (CM) of the Council of Europe (CoE) stressed that, in accordance with the judgments of the ECtHR in these cases, the Azerbaijani government is required “rapidly to eliminate all the remaining negative consequences of the criminal charges” against the individuals concerned and to ensure that the convictions handed down against them “are quashed”.⁵ (See more in the chapter on the Implementation of Judgments of the ECtHR below).

Freedom of Association

While the authorities of Azerbaijan have an obligation to safeguard the right to freedom of association under both domestic legislation (Article 58 of the Constitution) and international human rights treaties to which the country is a party, they have failed to guarantee this right to citizens in practice.

1 Azerbaijan: 51 political prisoners released during Novruz celebrations, International Partnership for Human Rights (IPHR) and Human Rights Club statement, 19 March 2019, available here <https://www.iphronline.org/azerbaijan-51-political-prisoners-were-released-in-relation-to-the-novruz-celebrations-full-list.html>

2 Ibid

3 Statement by the Spokesperson on the pardoning of prisoners in Azerbaijan to mark Novruz Holiday, European External Action Service, 17 March 2019, available here https://eeas.europa.eu/headquarters/headquarters-homepage/59751/statement-spokesperson-pardoning-prisoners-azerbaijan-mark-novruz-holiday_en

4 *Aliyev v Azerbaijan*, Application No. 68762/14 and 71200/14, 20 September 2018, para 223

5 CM decision on the *Ilgar Mammadov group v Azerbaijan*, adopted during its 1355th meeting on 23-25 September 2019, CM/Notes/1355/H46-2

Restrictive legislation limiting the right to freedom of association, which was adopted in 2009 and further amended in 2013-2014, remains in force.⁶ This legislation makes it extremely difficult for non-governmental organizations (NGOs), particularly those working on human rights, to operate in the country – to register as legal entities, to receive grants and financial support and to implement their activities.⁷ Further, due to the restrictive legislation, the threat remains of administrative or criminal prosecution of individuals working for NGOs, journalists and anyone critical of government policies.

During the May 2018 Universal Periodic Review (UPR) of Azerbaijan, held under the auspices of the UN Human Rights Council, the Azerbaijani government was recommended, inter alia, to “permit peaceful civic activity”, including by “removing undue restrictions to accessing foreign grants and amending laws regarding the registration, operation, and funding of NGOs, in accordance with the recommendations of multilateral institutions”.⁸ In its responses to the Human Rights Council, the Azerbaijani government did not accept or endorse these recommendations.

REGISTRATION OF NGOS

According to the law, under the definition of NGO, both public associations and funds are considered.⁹ State registration is not compulsory for NGOs in Azerbaijan: they may operate on an informal basis, without such registration. However, in order to acquire legal status, which is needed to undertake many basic NGO operations, they are required to register under the 2003 Law on State Registration and the State Registry of Legal Entities. In particular, having a legal personality is a pre-condition for opening a bank account, receiving funding from donors, renting office space and engaging in court proceedings. Thus, in practice, it is difficult for NGOs to carry out their activities without state registration.

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- 6 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). 10. On 15 February 2013, the Parliament of the Republic of Azerbaijan adopted new amendments to the Law on NGOs, introducing a new provision on Donations and Grants (Article 24-1), as well as to the Law on Grants and the Code of Administrative Offences. The amendments entered into force on 12 March 2013 upon their publication in the official journal. 11. Another set of amendments to the Law on NGOs, as well as to the Law on Grants, the Law on Registration and the Code of Administrative Offences was adopted by Parliament on 17 December 2013. The amendments entered into force on 3 February 2014, upon their publication in the official journal. 12. Finally, a new set of amendments to the Law on NGOs, as well as to the Law on Grants was adopted by Parliament on 17 October 2014. On 14 November 2014, the President signed these amendments and issued two Presidential Decrees on their application.
- 7 Report, Key concerns and recommendations on the protection of fundamental rights in Azerbaijan, October 2018 https://iphronline.org/wp-content/uploads/2018/10/last-EU_Az_HR_dialogue-updated-11.10.pdf
- 8 Universal Periodic Review - Azerbaijan, available here <https://www.ohchr.org/EN/HRBodies/UPR/Pages/AZindex.aspx>
- 9 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); 21. The term “NGO” encompasses public associations and funds. 22. “Public association” is defined as “a voluntary, self-governed non-governmental organization, established by the initiative of a number of physical and/or legal persons, joined on the basis of common interests with purposes, defined in its constituent documents, without mainly aiming at gaining profits and distributing them between its members” (Article 2.1). Public associations under the Law on Non-Governmental Organizations are therefore not identical to public association in the usual meaning of this word, amounting to associations established by public law or with a public aim. They are thus fully covered by the guarantees offered by freedom of association and other human rights and fundamental freedoms. 23. “Fund” is “a non-governmental organization without members, established by one or a number of physical and/or legal persons based on property contribution, and aiming at social, charitable, cultural, educational or other public interest work” (Article 2.2).

According to the Law on State Registration and State Registry of Legal Entities, an NGO wishing to obtain registration should apply to the Ministry of Justice (MoJ) and submit relevant supporting documents, including the statutes of the organization, its founding document, a document confirming its address and proof that it has paid the required state fee.

The MoJ has repeatedly denied registration to NGOs on arbitrary grounds or returned their application documents due to alleged shortcomings needing to be addressed. In several cases in the last few years, the Ministry has refused to grant registration because the applicants have allegedly failed to submit all required supporting documents. This restrictive practice has resulted in a sharp decrease in the number of applications for registration submitted by NGOs.

The ECtHR has adopted several judgments against Azerbaijan concerning the arbitrary denial of NGO registration. In the most recent ruling, handed down on 25 July 2019, the ECtHR found a violation of Article 11 of the European Convention on Human Rights (which protects the right to freedom of association) because of the repeated refusal of the authorities to register the HRC.¹⁰ The ECtHR ordered the state party to pay financial compensation to the applicants. On the basis of this judgment, in November 2019, the HRC applied for registration again, and its application remains pending before the MoJ.

For branches and representative offices of foreign NGOs, it is obligatory to obtain state registration in order to operate lawfully in Azerbaijan. In this case, registration requires the conclusion of an agreement between the representative office and the MoJ, which provides an additional obstacle to the registration of foreign organizations.

ACCESS TO FUNDING FOR NGOS

A number of legislative amendments adopted in Azerbaijan in recent years have seriously undermined the financial independence and sustainability of NGOs by curtailing their access to funding.

Amendments to the Law on Grants, adopted on 17 October 2014, as well as a subsequent regulation of the Cabinet of Ministers, adopted on 22 October 2015 introduced new stringent requirements concerning the provision of grants to NGOs in Azerbaijan that resulted in a significant decrease in the number of grant-making organizations operating in the country. According to these provisions, foreign legal entities may only provide financial support to NGOs in the country after obtaining government approval of the “financial-economic expediency” of the proposed grants, as well as after registering the grants with the MoJ.¹¹ Moreover, even if the donor organization obtains permission to provide a grant, there are additional requirements that must be met before the recipient NGO can access the funding. In particular, an NGO must register the grant agreement with the MoJ. The NGO must also submit a request to this body to register any sub-grant agreements with a third party.¹² Both grant agreements and any sub-grant agreements should be submitted to the MoJ for registration within 30

10 *Jafarov and Others v Azerbaijan*, Application no. 27309/14, 25 July 2019.

11 Azerbaijani Law on Grants, article 2.5; Regulation of the Cabinet of Ministers on “Rules to obtain the right to provide grants in the territory of Azerbaijan Republic by foreign donors, 22 October 2015, available here <http://e-qanun.az/framework/31488>

12 Article 1.5 of the Cabinet of Ministers Decision on Approval of rules of registration of grant agreements (decisions) of 5 June 2015.

days following the signature of the agreement.¹³ Non-compliance with these requirements could result in the suspension of NGO activities and financial penalties.¹⁴ According to the Code of Administrative Offences, responsible individuals may be fined up to 2500 AZN (EUR 1300) and legal entities up to 7000 AZN (EUR 3300) for the failure to submit a grant agreement to the MoJ for registration. In addition, bank or other financial operations relating to grants cannot be carried out unless the registration requirements have been complied with in full. We are not aware of any instances of donor organizations successfully obtaining registration from the MoJ to provide grants to human rights organizations in Azerbaijan since the application of these rules began in 2015. As a result, Azerbaijani human rights organizations have been deprived of essential financial support that they need to function properly and exercise their right to freedom of association.

In its 15 December 2014 opinion on the Law on non-governmental organizations (public associations and funds) as amended, of the Republic of Azerbaijan the Venice Commission criticized the provisions on NGO grants. The Commission stated that “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 issues such as human rights, democracy and the rule of law.”¹⁵

On 11 January 2017, the Cabinet of Ministers adopted amendments to the rules on the registration of foreign grants, for the stated purpose of simplifying the procedure of registering and obtaining permission to use grants. These regulations, which do not have the force of law, allow both donors and grant recipients to request permission from the Ministry of Finance (MoF) for donors to issue grants and shorten the periods for the consideration of requests to the MoJ to register grants from 15 to 7 days.¹⁶ However, these changes did not address the most problematic requirements in place, including the requirements for donors to obtain permission to issue grants and for NGOs to register grant agreements in the first place. There is also no publicly available information on the implementation of the amended rules or the number of NGOs that have benefited from them.

REPORTING REQUIREMENTS FOR NGOS

In accordance with the Azerbaijani Law on Non-governmental organizations (Article 29) and the Law on accounting registry (Articles 13 and 14), NGOs are subject to excessive reporting requirements: they are required to provide quarterly reports to the Tax Agency, the Social Protection Fund and the State Statistical Committee, as well as annual reports to the Tax Agency, the Social Protection Fund and the MoF. This creates a heavy administrative burden on NGOs and many of them experience difficulties in meeting these reporting obligations. NGOs that fail to comply with the reporting requirements, similar to other applicable requirements, risk penalties, including substantial fines or the suspension or closure of their activities.

13 The Ministry of Justice should register grant agreements within 15 days following the receipt of necessary documents for the registration, but in case additional documents are required by the Ministry, this period can be prolonged for extra 15 days. The Ministry has power to reject registration and the law stipulates that in case of rejection on registration, given grants cannot be used by recipients.

14 Law on Non-governmental organizations (public unions and foundations), 13 June 2000, Article 31, available here <http://www.e-qanun.az/framework/511>

15 Ibid 6

16 Decision of the Cabinet of Ministers on approving the Rules of Registration of grant agreements (decisions), 5 June 2015, available here <http://www.e-qanun.az/framework/30212> and Decision of the Cabinet of Ministers on approving the Rule on obtaining the right for foreign donors to provide grants in the territory of the Republic of Azerbaijan, 22 October 2015, available here <http://www.e-qanun.az/framework/31488>

HARASSMENT OF CIVIL SOCIETY LEADERS

Several Azerbaijani NGO leaders and other prominent civil society representatives continue to face obstacles in their daily human rights work. The convictions and criminal records of Intigam Aliyev, Khadija Ismayil, Anar Mammadli, Rasul Jafarov and others remain in place, although the Committee of Ministers of the CoE has repeatedly called on the Azerbaijani authorities to quash and delete them as part of the implementation of judgments of the ECtHR (see more details below).¹⁷ The 2014 joint criminal investigation against several domestic and foreign NGOs, which led to the imprisonment of leading civil society activists, has not been closed to date.¹⁸ In addition to hampering their ongoing work, the convictions and criminal records impede the ability of these individuals to exercise their civil and political rights, such as the right to stand for elections or to take a Bar exam to become qualified lawyers. The bank accounts of some of the NGO leaders affected, as well as their organizations, remain frozen and some of them are subject to travel bans (see more on travel bans in the chapter on Freedom of Expression and Media). For example, a travel ban arbitrarily and automatically imposed on Intigam Aliyev, Chair of the Legal Education Society, upon his conditional release from custody on 28 March 2016 remains in force. In addition, on 29 December 2019, Sumgayit City Court imposed a new travel ban on Aliyev, because of the alleged failure of his NGO to pay a tax debt from 2011-2014. The ban was imposed at the request of the Baku City Local Revenues Head Department of the Ministry of Taxes, which did not provide any detailed information explaining the basis for the alleged tax evasion, nor did it enclose any supporting evidence. Aliyev considers this decision to be a continuation of the authorities' retaliation against him because of his human rights activities.

Smear campaigns against NGO leaders also continue. For example, on 19 April 2019, the government-run website <https://azvision.az/> published an article discrediting Akif Gurbanov, the Chair of the Institute for Democratic Initiatives. The article accused him of embezzling grants and deceiving international donor organizations that support his NGO. Following the publication of this article, Gurbanov broadcast live on social media networks to disprove the allegations, including by showing documents of his property and income.

RECOMMENDATIONS

The Azerbaijani authorities should:

- Bring legislation and regulations affecting NGOs into compliance with international human rights standards, in accordance with the recommendations of the Venice Commission and other international human rights bodies, as well as relevant judgments of the ECtHR (see more on the last point in the chapter on Implementation of Judgments of the European Court of Human Rights). Measures to this end should include, in particular, simplifying the legal framework for NGO and grant registration, abolishing the excessively harsh penalties for violations of various requirements relating to NGO operation and activities; and allowing both domestic and foreign NGOs to operate without compulsory government registration and interference, and simplifying reporting obligations;
- Refrain from criminalizing and defaming peaceful and legitimate activities of independent civil society organizations and activists; take all necessary measures to remove all burdensome and

17 Ibid 5, also CM decision on the *Ilgar Mammadov group v Azerbaijan*, adopted during its 1362th meeting on 3-5 December 2019.

18 IPHR Report: Justice Behind Bars: the Persecution of Civil Society in Azerbaijan, 1 December 2015, available [here](#)

disproportionate administrative or legal obstacles for individuals and organizations to be able to operate fully in the country; rescind travel bans imposed in this context and unblock bank accounts of civil society leaders;

- Fully cooperate with the CM of the Council of Europe on implementation of the ECtHR judgments relating to human rights defenders and NGO leaders (see also the chapter on Implementation of Judgments of the ECtHR).

Freedom of Peaceful Assembly

The year 2019 proved challenging for those wishing to gather for peaceful protests on political and socio-economic issues in Azerbaijan. Local executive authorities arbitrarily restricted freedom of assembly, including by prohibiting the conduct of peaceful assemblies in some cases.

Article 5 of the Law on Freedom of Assembly of Azerbaijan requires the organizers of assemblies to provide written advance notice to the relevant executive body. This should, as a rule, be done at least five days in advance written notice. However, if justification is provided, a shorter notice period may be acceptable. Written notifications should include information, among others, about the date, time and planned venue or route of the assembly, the approximate number of participants, the objectives of the gathering and the organizers' contact information.

Even though the Law on Freedom of Assembly does not require obtaining permission for gatherings, in practice executive bodies and police interpret the requirement to provide advance notice to this end. Although article 7 of the Law states that "no restrictions shall be placed on the exercise of the right to freedom of assembly other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety [...]", it sets out restrictions that go beyond these requirements. For example, it allows the prohibition of assemblies in the vicinity of state and government buildings.¹⁹

In an example of how the authorities arbitrarily prohibited assemblies, Baku city authorities refused to allow the National Council of Democratic Forces (NDCF, also known as Milli Shura) – an alliance of opposition parties - to conduct a peaceful rally in the capital on 5 May 2019. As is common practice, police used disproportionate force when dispersing peaceful rallies and arbitrarily detained, harassed and intimidated protesters prior to or during protests.²⁰ While most protesters who were detained were eventually released without charge, others were convicted of administrative offences and fined or locked up for up to several weeks. Many of those detained during peaceful rallies reported facing torture and ill-treatment while in custody.

After police violently dispersed two peaceful protests held in Baku and detained dozens of participants in October 2019 (see more below), a group of Azerbaijani civil society representatives appealed to the international community to urge the Azerbaijani authorities to grant access to detention facilities for

19 The Law states that assemblies may be prohibited in the vicinity (within 200 meters) of the following buildings: the Milli Madjlis of the Republic of Azerbaijan, Ali Madjlis of the Nakhchivan Autonomous Republic; the Presidential Palace, the Presidential residence, the Cabinet of Ministers of the Republic of Azerbaijan, the Cabinet of Ministers of the Nakhchivan Autonomous Republic, bodies of central, city and regional executive power; as well as the Constitutional Court, the Supreme Court, Courts of Appeal of the Republic of Azerbaijan, and the Supreme Court of the Nakhchivan Autonomous Republic.

20 Human Rights Watch, World Report 2020, available here <https://www.hrw.org/world-report/2020/country-chapters/azerbaijan>

independent monitors and to ensure full, impartial and independent investigations into the allegations of excessive use of force by police during rallies.²¹

The examples below highlight the concerns described above. The information has been provided by the HRC and its partners on the ground who monitor and document violations related to the conduct of peaceful assemblies:

- On 6 January 2019, a group of young people gathered outside the Baku Appeal Court to protest against the additional trumped-up charges initiated against blogger **Mehman Huseynov**, who risked having his prison term prolonged (see more on his case in the chapter on Freedom of Expression). The protesters were rounded up by police and fined or sentenced to detention of 20-25 days under article 513.1 of Azerbaijan's Code on Administrative Offences (which concerns violations of the rules for organizing and conducting assemblies).²² On 11 January 2019, Alizamin Salayev (arrested for 25 days) and Tariyel Malikzade (arrested for 20 days) – both of whom are members of the Salyan regional division of Azerbaijani Popular Front Party - were detained when holding a similar rally in support of Mehman Huseynov and sentenced under the same article of the Code on Administrative Offences.
- The National Council of Democratic Forces held a peaceful rally in Baku on 19 January 2019, calling on the authorities to free political prisoners. A number of young activists were placed under administrative detention by police prior to the rally. Most of them were released without charge, but two activists were given administrative arrests.²³ In addition, nine activists were detained during the rally and subsequently convicted on charges of allegedly resisting the orders of the police under article 535.1 of the Code on Administrative Offences. They were sentenced to detention for periods ranging from 10 to 30 days.²⁴
- Prior to the 19 January rally, police warned activists not to participate in any demonstration in the coming days. In addition, police detained some activists both before and after the rally and allegedly fabricated administrative cases against them on charges of resisting the police or minor hooliganism, based on which the activists were sentenced to administrative detention for different periods of time. For example, **Elvin Abdullayev**, a member of the Musavat Party and a former political prisoner who participated in the 19 January rally, was sentenced to 25 days of administrative detention on charges of resisting the police (under article 535.1 of the Code on Administrative Offences) on 23 January 2019.
- On 22 January 2019, **Rajab Rajabov**, who is a member of the Council of the opposition Republican Alternative Party (ReAl), participated in a rally held at the Sport-Health Center stadium in Baku's Yasamal district to protest against the imprisonment of blogger Mehman Huseynov

21 APPEAL of Azerbaijani civil society activists and representatives to the UN Committee Against Torture and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on the cases of politically motivated torture in Azerbaijan, October 2019, available here <https://www.nhc.no/content/uploads/2019/10/AZ-CSO-Appeal-07112019.pdf>

22 Mete Turksoy was sentenced to 25 days of detention, and Ismayil Nadirli and Goshgar Ahmadov to 20 days of detention. The other participants were fined: Bakhtiyar Mammadov, Orkhan Mammadov, Elchin Rahimzade were fined 400 AZM (some 205 EUR); and Yashar Khaspoladov 450 AZM (some 230 EUR).

23 Ilham Huseyn for 60 days and Seymur Hazi for 30 days.

24 Those convicted include: Head of the Nizami regional branch of the Azerbaijani Popular Front Party (APFP), Pasha Umudov and member of APFP Sabunchu regional branch member Namig Abbasliyev (30 days' of detention); APFP Narimanov regional branch member Elshan Tahmazov (23 days' detention); APFP Youth Committee head Emil Salimov, APFP Supreme Council member Nijat Abdullayev, APFP Youth Committee member Nijat Nizamov and APFP Presidium member Sagif Gurbanov (20 days' detention); APFP Saatli regional branch member Kamran Amirov (17 days' of detention); and APFP Nasimi regional branch head assistant Farid Asadov (10 days' of detention).

and other journalists and activists. After the rally, the police in the Tartar region where Rajabov lives summoned him for interrogation and questioned him about his reasons for participating in the rally, his political affiliations, his co-participants in the rally and his family members. He was warned not to participate in opposition rallies again. Rajabov's close friends and family members were also warned by police.

- On 8 March 2019, police forcefully dispersed a peaceful rally organized by women's rights groups at the "Free Woman" monument in Baku. In addition to being ill-treated by police during the forceful dispersal of the protest, the participants were physically attacked by a group of older women who appeared to have been specifically recruited for this purpose by police. No investigation in to police violence has been launched.
- On 7 May 2019, parents of individuals detained as part of the so-called Ganja events held a peaceful rally in front of the presidential administration building in Baku, demanding the release of these prisoners.²⁵ Police forcefully dispersed the rally and detained some of the demonstrators, who were, however, later released without charge.
- In mid-November 2019, IPHR deployed a team of monitors to investigate the alleged use of excessive force against peaceful demonstrators in Baku, Azerbaijan, on 19-20 October 2019. On those dates, police violently dispersed two peaceful protests held in the city and detained dozens of participants. The NCDF organized the protest on 19 October, which called for the release of political prisoners, as well as for free and fair elections. Among those detained that day was the leader of the opposition Popular Front Party, Ali Karimli, and several other opposition activists. A group of women's rights activists organized the demonstration on 20 October, dubbed the 'March for Women', to protest against endemic domestic violence and the government's unwillingness to adequately address this issue. Those detained during this protest included some 20 civil society leaders, mostly women. During the IPHR-led mission, lawyers and civil society activists collected testimonies from victims of police abuse in connection with the two peaceful protests. IPHR plans to publish and disseminate a report on the findings of the mission in early 2020. In a statement issued on 19 October 2019, the EU noted the excessive use of force and the detention of protesters and called on the Azerbaijani authorities to investigate these cases and release the protesters who remained in detention.²⁶
- In an example of the mounting pressure on opposition political parties, some 20 local police officers prevented a meeting of the opposition Musavat party from taking place in the city of Zagatala on 25 May 2019 by blocking access to the planned meeting venue (the house of the father of party leader Arif Hajili). Police briefly detained two party members, **Mustafa Aghayev** and **Veysel Aghayev** and reportedly intimidated, **Gulagha Aslanli**, head of the party's Central Executive Office who travelled to Zagatala from Baku to participate in the meeting. The police officers present sought to justify their actions by saying that the organizers of the meeting would have had to obtain permission from the authorities for the meeting.

25 Eurasianet, Azerbaijan: One year on, Ganja events remain unexplained, Durna Safarova, Aug 26, 2019, available [here](#).

26 European External Actions Service, Statement by the Spokesperson on the latest developments in Azerbaijan, Brussels, 19 October 2019, available [here](#).

RECOMMENDATIONS

The Azerbaijani government should:

- Respect the right to freedom of peaceful assembly and refrain from restricting this right in ways that are not compatible with its obligations under international law, including the European Convention on Human Rights;
- Ensure thorough, impartial and independent investigations into all allegations of the excessive use of force against peaceful protesters by police and hold accountable those responsible for the use of disproportionate force, unlawful detentions and torture and ill-treatment of detained protesters.

Freedom of Media and Expression

The climate for media and free speech in Azerbaijan is extremely repressive. This is illustrated by the fact that Azerbaijan was ranked 166th among 180 countries in the 2019 World Press Freedom Index published by Reporters without Borders, down three places from 2018.²⁷

HARASSMENT OF JOURNALISTS

Journalists who report critically about those in power continue to be subjected to harassment, including trumped-up charges and arbitrary travel bans.

In the December 2019 report issued following her visit to Azerbaijan on 8-12 July 2019, Council of Europe Commissioner for Human Rights Dunja Mijatovic noted that “journalists and social media activists, who had expressed dissent or criticism of the authorities, are continuously detained or imprisoned in Azerbaijan on a variety of charges.”²⁸ She called on the Azerbaijani authorities to release all those detained because of the views they expressed and to fully execute all judgments issued by the ECtHR relating to the arbitrary application of criminal legislation to restrict freedom of expression in the country.²⁹ The Commissioner also noted that “dozens of journalists, lawyers, and political activists and human rights defenders are banned from leaving the country, in circumstances which give rise to justifiable doubts about the lawfulness of such travel bans.” She called on the Azerbaijani authorities to refrain from imposing “arbitrary or disproportionate” travel bans and to “lift immediately” those which are in contradiction with the right to leave the country.

During the 2018 UPR, the Azerbaijani government was recommended to “repeal the recent legislation that restricts freedoms of expression, peaceful assembly and association, and ensure a safe environment for journalists, activists and human rights defenders”.³⁰

As of January 2020, five journalists and bloggers (**Araz Guliyev, Seymur Hazi, Elchin Ismayilli, Afgan Mukhtarli** and **Ziya Asadli**) remained in prison on trumped-up criminal charges. Afgan Mukhtarli, who

27 Reporters without Borders, Press Freedom Index 2019, available here <https://rsf.org/en/azerbaijan>

28 Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Azerbaijan from 8 to 12 July 2019, available here <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

29 The implementation of these cases is reviewed as Mahmudov and Agazade group of cases by the Committee of Ministers. More information on these cases available [here](#).

30 Universal Periodic Review, Azerbaijan, May 2018, available [here](#).

was abducted in Tbilisi, Georgia in May 2017 and thereafter transferred to Azerbaijan and imprisoned there, continues to serve a six-year prison sentence on charges of illegal border crossing, smuggling and violently resisting a law enforcement official. Prior to his detention, Mukhtarli wrote about issues such as corruption and the crackdown on human rights NGOs for local and international media outlets.

As already mentioned above, as a result of a presidential pardon, over 50 political prisoners, including a number of journalists and bloggers were released from prison in March 2019. Among them were journalists **Nijat Aliyev, Fikrat Faramazoghlu** and **Murad Adilov**, blogger **Rashad Ramazanov** and satirical writer **Tofiq Hasanli**.³¹ While this development was welcome, the released prisoners were not acquitted of the charges of which they had been convicted.

Mehman Huseynov, blogger and head of the Institute of Reporters' Freedom and Safety was released from prison on 2 March 2019 after serving fully a two-year sentence on slander charges, which were brought against him after he accused police of abducting and beating him. His release was preceded by an attempt by the authorities to prolong his prison sentence on trumped-up charges of allegedly disobeying the orders of prison staff in December 2018. Following a domestic and international outcry, including a protest in his support in Baku and the adoption of a resolution by the European Parliament in January 2019 calling for his release, the new charges were not pursued and Huseynov was released following the expiration of his original prison sentence.³² The travel bans against journalists **Khadija Ismayil, Shahveled Chobanoglu, Mustafa Hajibayli, Aziz Orujov, Anar Mammadov** remained in place at the beginning of 2020.³³

WEBSITE BLOCKING

No independent or opposition print media are currently able to operate in Azerbaijan, and all TV channels and radio stations remain under strict government control. The Turan online media outlet is among a few independent media outlets accessible in the country, while a number of independent and opposition news websites continue to be blocked there.

Since May 2017, over 20 websites have been blocked in Azerbaijan, including those of Radio Free Europe/Radio Liberty (RFE/RL) and its Azerbaijani service, Azadliq Radio; Azadliq Newspaper (independent of Azadliq Radio), Meydan TV; Turan TV; and Azerbaijan Saati (Azerbaijan Hour). The measures to block these websites followed the adoption of amendments to the legislation regulating the internet, which were approved by the President in March and April 2017. These amendments created new powers for the government (in particular, the Ministry of Transport, Communications and High Technology) and domestic courts to block websites allegedly containing 'prohibited material' such as information considered to pose a danger to the state or society.³⁴ As of early 2020, none of the websites had been able to effectively challenge the measures in the domestic courts and, thus, they remain blocked in the country.

31 Azerbaijan: 51 political prisoners released during Novruz celebrations, International Partnership for Human Rights (IPHHR) and Human Rights Club statement, 19 March 2019, available here <https://www.iphronline.org/azerbaijan-51-political-prisoners-were-released-in-relation-to-the-novruz-celebrations-full-list.html>

32 European Parliament resolution of 17 January 2019 on Azerbaijan, notably the case of Mehman Huseynov (2019/2511(RSP)), available here https://www.europarl.europa.eu/doceo/document/TA-8-2019-0033_EN.html

33 On 11 February 2020, Baku Court of Appeals annulled the conviction of Aziz Orujov. This could mean that his travel ban will be automatically annulled. However, due to the short time between this decision and publication of this report the authors of this report are not able to establish how in practice this will be implemented and whether Aziz Orujov will be allowed to leave the country if he wishes to.

34 Amendments to the Information, Information Technologies and Protection of Information Act (Chapter III-I), 19 March 2019; Amendments to the Code of Civil Procedure (Chapter 40-6), 20 April 2017.

On 26 September 2019, the ECtHR decided to grant priority to the examination of the applications of Meydan TV, Azadliq.Info, Turan TV and Azerbaijan Saati challenging the blocking and started the examination of the case.³⁵

Among the other websites blocked since May 2017, based on a decision by court following a petition from the Ministry of Transport, Communications and High Technology, are the sites of the Organized Crime and Corruption Reporting Unit (OCCPR), abzas.net, onyektiv.tv and others. In addition, since 8 April 2019, access to the independent news site Arqument.az has been blocked in the country. According to the head of the news site, no explanation for this measure was provided by the Ministry of Transport, Communications and High Technology, which initiated the blocking.

In the December 2019 report on her July 2019 visit to Azerbaijan, Council of Europe Commissioner for Human Rights Dunja Mijatovic called on the authorities to “bring the legislation and practice affecting Internet freedom in line with European standards”, stressing that the blocking of websites is “an extreme measure which may hamper the right to access information.”³⁶ During the 2018 UPR, calls were also made for the Azerbaijani government to end the blocking of independent and opposition websites.³⁷

RECOMMENDATIONS

The Azerbaijani government should:

- Implement the recommendations pertaining to freedom of expression made by the Council of Europe Commissioner for Human Rights following her visit to Azerbaijan, including by releasing all individuals detained because of the views they expressed; fully executing all judgments issued by the ECtHR relating to the arbitrary application of criminal legislation to restrict freedom of expression; refraining from imposing arbitrary or disproportionate travel bans and immediately lifting such bans in place; and bringing the legislation and practice on internet freedom in to line with European standards;
- Stop blocking independent and opposition news sites in retaliation for their publication of information critical of those in power and enable independent and opposition media outlets to resume their operations in the country.

Crackdown on the Independent Legal Profession in Azerbaijan

The legal profession is under great pressure in Azerbaijan. Independent lawyers taking on human rights or otherwise “politically sensitive” cases have been targeted by means of various sanctions leading to their disbarment or the suspension of their licences, the initiation of, or threats of disciplinary proceedings, and other repercussions for their work. Most disciplinary proceedings against lawyers have been initiated in response to their exercise of the right to freedom of expression: for publicising human rights violations perpetrated against their clients in detention or for disclosing instances of the

35 AZADLIG.INFO and others against Azerbaijan, Application No. 36589/17, communicated to the Government on 20 September 2019; EHRAC news ‘European Court: Azerbaijani Government has case to answer over blocking of news websites, 10 October 2019, available [here](#).

36 Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Azerbaijan from 8 to 12 July 2019, available [here](#).

37 Universal Periodic Review, 2018 Azerbaijan, available [here](#).

abusive administration of justice in their clients' cases. As a result of such persecution over two dozen lawyers have been deprived of the opportunity to practice their profession since 2005. In recent years, the number of such cases has greatly increased.³⁸

Among the most recent disbarment cases is the case of human rights lawyer **Yalchin Imanov** who was indefinitely disbarred by the Ganja Administrative Economic Court on 22 February 2019 because of comments he made to the media about the torture of his client in the high security Gobustan prison.³⁹ On 8 August 2017, when contacted by several media outlets, Imanov told them that his client Abbas Huseynov had alleged been severely tortured by prison officials and that he himself had seen bruises all over his client's body. As a result, the Prison Service requested the Azerbaijani Bar Association (ABA) to take disciplinary measures against Imanov for allegedly aiming "to cast a shadow over the work and reputation of state structures" and "to cause disorder [and] tension among some groups of the society". His licence was suspended by the ABA on 20 November 2017, pending a court decision on his disbarment. Fifteen months later, he was disbarred by the Ganja court on the basis of the request from the ABA, which claimed that he had damaged "the honour, dignity and business reputation" of the Prison Service by providing information to the media about the alleged torture of his client. The lawyer's appeals to the authorities to investigate the torture allegations have not been addressed to date.

On 27 November 2019, the ABA made a decision to suspend the licence of Azerbaijani human rights lawyer **Shahla Humbatova** and to seek her disbarment from the court on the basis of a complaint from a past client and the alleged failure to pay several months of Bar membership fees.⁴⁰ Humbatova dismisses the accusations from her client and considers such measures disproportionate and retaliatory for her human rights defence work, particularly in the above mentioned Ganja case where she acted as the lead defence lawyer. Lawyer **Irada Javadova** is awaiting a court decision on the ABA's request for her disbarment based on a complaint from one of her clients, who allegedly stated that Javadova wrote a public letter about her case without her consent and without having a notarized power of attorney. On 11 June 2018, the ABA suspended Javadova's membership and applied to court for her indefinite disbarment. At the beginning of 2020, the ABA's request was still pending before the court.

On 7 December 2019 and on 14 November 2019, the Office of the Prosecutor General submitted complaints to the ABA requesting that disciplinary measures were taken against lawyers **Nemat Kerimli** and **Elchin Sadigov**.⁴¹ Both lawyers were accused of disseminating allegedly false information to the public: Kerimli provided comments to the media on the reported ill-treatment by police of Tofiq Yagublu, one of the organisers of the protests on 19 October 2019. The complaint against Sadigov relates to his Facebook post where he shared his personal opinion speculating on the cause of the 29 October car crash that seriously injured and hospitalised the prominent Azerbaijani human rights activist Oktay Gulaliyev. In January 2020, the proceedings against Sadigov were eventually terminated by the ABA.

38 EHRAC List, Azerbaijani human rights lawyers who have been disbarred, suspended or criminally prosecuted, August 2019 available here <http://ehrac.org.uk/resources/disbarred-suspended-or-criminally-prosecuted-azerbaijani-human-rights-lawyers/>

39 EHRAC press release, 'Lawyer disbarred for disclosing his client's torture allegations in prison seeks justice from the European Court of Human Rights', 18 July 2019.

40 Open Letter to the Presidium of the Azerbaijani Bar Association by human rights organisations on 4 December 2019 available here <https://crd.org/2019/12/04/open-letter-to-the-presidium-of-the-azerbaijani-bar-association/>

41 'Azerbaijani Bar Association Must Cease Harassment of Human Rights Lawyers', Appeal to the Azerbaijani Bar Association by human rights organisations, 12 December 2019, available at <https://crd.org/2019/12/12/azerbaijani-bar-association-must-cease-harassment-of-human-rights-lawyers/>

On 25 February 2019, lawyer Elchin Sadigov was reprimanded by the ABA following accusations by the Prosecutor General's Office that he had allegedly proposed to his client Yunus Safarov to falsely complain about torture by the investigative authorities. According to Sadigov, the ABA failed to consider the photos and videos published online after his client's arrest, which showed clear and multiple signs of severe beatings on his client's body. On 5 September 2018, the Prosecutor General's Office discharged Sadigov from the criminal proceedings in which he acted as a counsel for the defence of Yunus Safarov.

On 10 September 2019, the ABA suspended the licence of lawyer **Adil Ismayilov** for one year based on accusations of slander made by another lawyer whom Ismayilov publicly criticized for failing to effectively protect the rights of a client whom he himself later represented. The client in question alleged that he was illegally arrested and ill-treated in detention. Ismayilov believes that social media posts in which he criticized the law enforcement agencies prompted the ABA's actions against him. On 24 September 2019, the ABA informed Ismayilov that it had withdrawn its decision. Such actions further demonstrate the arbitrary nature in which disciplinary proceedings are conducted, in the absence of sufficient procedural safeguards.

In May-June 2019, lawyers **Fariz Namazli, Shahla Humbatova** and **Elchin Sadigov** were threatened with disciplinary sanctions by the ABA following complaints from the law enforcement agencies in response to their speaking out about the violations of their rights as lawyers or those of their clients (such as the right to unhindered access to a client in detention).

None of the lawyers disbarred prior to 2019, such as **Khalid Bagirov, Alayif Hasanov, Farhad Mehdiyev, Elchin Namazov, Aslan Ismayilov** and **Muzaffar Bakhishov**, have been reinstated and are therefore unable to practise as lawyers to date.

Human rights lawyer and Chair of the Legal Education Society (LES) **Intigam Aliyev**, who was prosecuted and convicted by the authorities for his human rights work in 2014, and released in March 2016 after his seven-year prison sentence was changed to a five-year suspended sentence, remains under a travel ban. As a result, he is not able to leave the country to continue his legal advocacy activities or seek necessary medical treatment abroad. Furthermore, on 29 December 2019, he was made subject to a new travel ban on the basis of the alleged failure of his NGO (LES) to pay a tax debt from 2011-2014. In September 2019, the Azerbaijani authorities re-opened his office (which had been sealed after he was arrested in August 2014), and returned documents to him (which had been seized in connection with his arrest). However, his bank accounts and those of LES remain frozen by the authorities.

The continuing repression of human rights lawyers not only effectively eliminates such lawyers from the legal profession, but also deprives many victims of human rights violations of effective legal representation. This pattern has a strong chilling effect on members of the ABA as well as on other prospective human rights lawyers. As is evident from the cases described above, the ABA leadership fails to protect its members against improper interference with their professional activities and status. Instead, the ABA has been used by the authorities as a tool to punish lawyers for legitimately representing their clients in politically sensitive cases. The existing ABA disciplinary procedures fail to ensure that disciplinary cases are examined by an independent and impartial body.

It is of particular concern that disciplinary proceedings are often initiated based on a provision of the ABA's Code of Conduct (adopted on 7 December 2017), which limits the freedom of expression of lawyers by stating that lawyers are not permitted to disseminate: "slanderous and misleading information about the decisions of the Bar Association's bodies, published in the media, social networks and public places

that undermine the Association's credibility." This provision, further, states that lawyers "must not allow the spread of groundless, slanderous information about the state, non-state actors or officials and should not engage in non-ethical expressions and behaviours against such actors in the media, social networks and public statements."⁴² This provision has been applied in an abusive and unwarranted manner against human rights lawyers because of statements they have made publicly denouncing human rights violations perpetrated against their clients or otherwise legitimately exercising their right to freedom of expression.

In the recent report of December 2019 on her visit to Azerbaijan on 8-12 July 2019, Council of Europe Commissioner for Human Rights Dunja Mijatovic expressed concern about "the use of disciplinary measures on improper grounds, such as expressing critical views", as well as "the lack of clear criteria for the imposition of disciplinary sanctions, in particular disbarment".⁴³ She called on the ABA to "strengthen the procedural safeguards to ensure that complaints against lawyers are dealt with through transparent and fair proceedings", "with full respect of the principles and rules laid down in the European Convention on Human Rights". She also recommended that "the Code of Conduct be reviewed, in thorough consultation with lawyers and civil society representatives, to bring it into line with international standards on freedom of expression and ensure that no disciplinary sanctions are applied in retaliation to the legitimate exercise of this freedom".

There are further concerns about the inadequate role that courts play in reviewing disciplinary proceedings, often failing to provide an effective remedy for violations of the rights of lawyers in disbarment processes. Instead, in many disciplinary cases, the courts have upheld the position of the ABA without sufficient assessment or reasoning.

In July 2018, in its report to the European Council, the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy, the European Parliament called on Azerbaijan "to provide support for reform of the judiciary aimed at ensuring its impartiality and independence from the executive and at strengthening the rule of law; in particular, to ensure the independence of legal professionals by removing any undue interference in the work of lawyers, to allow independent practising lawyers to represent clients under the notarised power of attorney and to put an end to the Azerbaijani Bar's arbitrary powers to disbar lawyers and deny admissions of new members."⁴⁴

The current ABA leadership has continued strengthening the monopoly of the legal profession in Azerbaijan. Further to the 2017 amendments to the Civil and Administrative Codes of Azerbaijan and the Law on Lawyers and Lawyers' Activities, which prohibited non-members of the ABA to practise law in domestic courts, and thus drastically reduced access to justice for the wider population, the ABA has taken further steps to control access to the legal profession. Although the regular Bar examinations held in 2018 and 2019, which led to an increased number of ABA members, are a welcome development as such, serious concerns have been raised over the sufficiency and effectiveness of safeguards to ensure fairness and non-discrimination in the oral part of the examination process. No guidelines exist setting

42 Code of Conduct of the Members of the Azerbaijan Bar Association adopted by the Conference of the Azerbaijani Bar Association on 07 December 2017.

43 Commissioner for Human Rights of the Council of Europe, Dunja Mijatovic, Report following her visit to Azerbaijan from 8 to 12 July 2019 available at <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

44 European Parliament recommendation of 4 July 2018 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on the negotiations on the EU-Azerbaijan Comprehensive Agreement (2017/2056(INI)), available at https://www.europarl.europa.eu/doceo/document/TA-8-2018-0294_EN.pdf

out the criteria, which the panel of examiners should use to objectively assess the knowledge and skills of the person whose qualification is reviewed. This leaves room for arbitrary decisions and makes it possible to use the oral part of the examination as a barrier to prevent independent lawyers, especially those working on human rights issues, from joining the ABA.

RECOMMENDATIONS

The Azerbaijani government and/or the Azerbaijani Bar Association should:

- Ensure that disciplinary sanctions and other retaliatory measures are not used against independent lawyers as a tool to punish them for their defence work;
- Introduce strong legal and procedural safeguards to ensure the fairness of disciplinary proceedings against lawyers;
- Remove provisions limiting lawyers' freedom of expression from the ABA's Code of Conduct for Lawyers;
- Ensure that licences of lawyers who have been unfairly disbarred are restored, e.g. by having their cases before the domestic courts re-opened and re-examined in line with international fair trial standards;
- Abolish the oral part of the Bar admission examination;
- Simplify access to the ABA to increase the number of qualified lawyers, particularly those in the regions of the country, as the number of lawyers per capita remains very low.

Implementation of Judgments of the European Court of Human Rights

ECTHR CASES ADDRESSING THE SITUATION OF HUMAN RIGHTS DEFENDERS IN AZERBAIJAN

Against the background of the widening crackdown on civil society seen in Azerbaijan since 2014, EHRAC and its Azerbaijani partner lawyers have brought a series of applications to the ECtHR on behalf of civil society figures (including human rights NGOs, defenders, lawyers, journalists and activists), challenging the actions taken against them by the Azerbaijani authorities. These actions include the refusal to register NGOs and/or their grants; human rights violations related to arrest, detention and criminal proceedings; detention conditions in violation of the Convention and ill-treatment (including the failure to provide medical care in detention); travel bans; disbarment of human rights lawyers; and defamation proceedings brought against lawyers critical of the law enforcement authorities.

To date, the ECtHR has issued judgments in a number of cases brought by Azerbaijani human rights defenders relating to their arrest and pre-trial detention in 2014, as a part of the civil society crackdown.⁴⁵ In the cases of human rights defenders **Rasul Jafarov** and **Intigam Aliyev** (who were represented by EHRAC), and **Anar Mammadli**, the ECtHR found that their arrest and pre-trial detention were unlawful and had no evidential basis. The ECtHR also held that by arresting and detaining the human rights defenders the Azerbaijani authorities aimed to punish them and prevent them from carrying out their

⁴⁵ *Rasul Jafarov v Azerbaijan*, Appl. no. 69981/14, 17 March 2016; *Anar Mammadli v Azerbaijan*, Appl. no. 47145/14, 19 April 2018; *Aliyev v Azerbaijan*, Appl. nos. 68762/14 and 71200/14, 20 September 2018.

work.⁴⁶ The ECtHR recognised the existence of “a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law” in Azerbaijan. It directed the Azerbaijani government, “as a matter of priority” to take measures to ensure “the protection of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention” and to ensure “the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the nonrepetition of similar practices in the future” (Aliyev, para 226).

In the case brought by Intigam Aliyev, the ECtHR also ordered the Azerbaijani government to adopt measures aimed at “restoring his professional activities”, which should ensure “maximum possible reparation for the violations found by the Court” (Aliyev, para 227).

Accordingly, the Azerbaijani government has an unconditional legal obligation to implement the ECtHR judgments in these cases by taking both individual measures (relating to the specific situation of the applicants), as well as general measures (to ensure that similar violations do not occur in the future).

On 25 September 2019, the CM of the Council of Europe, which supervises the implementation of ECtHR judgments, adopted a strongly worded decision on these cases where it underlined the following: “the (...) findings of the European Court make it clear that Azerbaijan is required rapidly to eliminate all the remaining negative consequences of the criminal charges brought against each of the applicants, principally by ensuring that the convictions are quashed and deleted from their criminal records”.⁴⁷ The Committee of Ministers also urged the Azerbaijani government to pay the compensation ordered by the Court in full without any delay and take other measures to remedy the individual situations of the applicants. Finally, the CM called on the Azerbaijani government to adopt effective and comprehensive measures to ensure the independence of the judiciary and the Prosecutor’s Office, and to ensure that there are no further retaliatory prosecutions, arbitrary arrests and detention or other misuse of criminal law against government critics, civil society activists and human-rights defenders. It reiterated its respective calls in its decision adopted in December 2019, adding that the Government should fully restore the applicants’ ‘civil and political rights in time for the next parliamentary elections’.⁴⁸ None of those applicants who intended to stand for parliamentary elections on 9 February 2020 were able to register as candidates due to the existing conviction and criminal record.

GENERAL OVERVIEW OF AZERBAIJAN’S RECORD OF COMPLIANCE WITH ECTHR JUDGMENTS

Azerbaijan joined the CoE and signed the European Convention on Human Rights on 25 January 2001 and thereby committed to fully comply with legally binding ECtHR judgments.⁴⁹ Yet, almost two decades later, its compliance with such judgments is the lowest among all 47 CoE member states, with 92% of the judgments in so-called “leading” cases remaining unimplemented to date (discussed further below). As Azerbaijan fails to uphold its respective international human rights obligations, we call on the European Union to regularly assess the status of Azerbaijan’s implementation of ECtHR judgments.

The main issues addressed in the judgments on Azerbaijan, with which the Azerbaijani authorities have failed to comply and whose implementation therefore is pending before the CoE Committee of Ministers include: actions of the security forces and ineffective investigations (Mikayil Mammadov group of cases,

46 Rasul Jafarov, para 162; Aliyev, para 215; Anar Mammadli, para 104

47 Ibid 5

48 Ibid 16

49 Article 46 of the European Convention on Human Rights

Muradova group of cases and Mammadov (Jalaloglu) group of cases); the lawfulness of detention on remand and protection against abuse of power (Ilgar Mammadov group of cases); the fairness of judicial proceedings (Huseyn and Others group, Insanov case); freedom of expression (Mahmudov and Agazade group of cases and Emin Huseynov group of cases); freedom of assembly and association (Gafgaz Mammadov group of cases and Ramazanova group of cases), protection of property rights (Mirzayev group of cases and Sargsyan case) and electoral rights (Namat Aliyev group of cases).⁵⁰

As of July 2019, 220 cases against Azerbaijan had been adjudicated by the ECtHR and transmitted to the Committee of Ministers for the supervision of implementation.⁵¹ Of these, 37 are classified as “leading” cases, i.e. *revealing new structural and/or systemic problems* that require substantial measures such as legal reforms or major policy changes. Only 3 “leading” cases have been closed by the Committee as having been implemented to date, leaving 92% of such cases still pending implementation. Azerbaijan is one of the 10 member states of the CoE with the highest number of cases pending implementation under the “enhanced supervision” procedure (which include urgent cases and judgments revealing important structural or complex problems).⁵² It is the first and only CoE member state against which the Committee of Ministers has initiated “infringement proceedings”: this was done because of Azerbaijan’s failure to comply with the Committee’s repeated calls to release the then imprisoned opposition activist and politician **Ilgar Mammadov** (relating to the judgment of 22 May 2014).⁵³ On 5 December 2017, the Committee asked the ECtHR to assess if Azerbaijan had failed to fulfil its obligation to comply with the judgment in this case. On 29 May 2019, the ECtHR ruled that Azerbaijan had failed to comply with the judgment by failing to respond to the Committee’s calls to release Mammadov.⁵⁴ In 2014-2019, applying Article 18 of the Convention, the ECtHR made a series of unprecedented findings that the Azerbaijani authorities had abused their powers when arresting and prosecuting nine human rights defenders, youth activists and political opposition figures, and a significant number of similar applications are currently pending before the Court.⁵⁵

50 Country Factsheet on Azerbaijan, prepared by the Department for Execution of Judgments of the European Court of Human Rights, last updated on 27 July 2019 <https://rm.coe.int/168070973e>

51 Ibid 48

52 12th Annual Report of the Committee of Ministers on Supervision of Execution of Judgments and Decisions of the European Court of Human Rights 2018, p. 71, 89; Country factsheet on Azerbaijan, Department for Execution of Judgments of the European Court of Human Rights.

53 Interim Resolution of the Committee of Ministers on the execution of the judgment of the European Court of Human Rights *Ilgar Mammadov v Azerbaijan*, CM/ResDH(2017)429, 5 December 2017. Mr Mammadov was subsequently released on 13 August 2018.

54 Proceedings under Article 46.4 in the case of *Ilgar Mammadov v Azerbaijan*, Application no. 15172/13, Grand Chamber judgment, 29 May 2019.

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

RECOMMENDATIONS

We urge the EU to raise the cases described above with the government of Azerbaijan and to remind the government of its legal obligations to comply with all ECtHR judgments and take all necessary steps to this end without any further delay.

In relation to the cases of human rights defenders specifically (and in line with the decisions of the Committee of Ministers of 25 September 2019 and 3-5 December 2019), the Azerbaijani government should be requested to take the following measures:

- Compensation awards ordered by the Court should be paid in full and without any further delay;
- The convictions of the human rights defenders should be quashed and their criminal records deleted, in line with the decisions of the Committee of Ministers;
- The travel bans imposed on Intigam Aliyev should be lifted so that he is able to renew his professional activities and legal advocacy work and seek medical treatment abroad; the court decision to freeze his personal bank account and that of LES should be lifted;
- Measures should be taken to ensure that those responsible for the persecution of human rights defenders are held accountable and that no such persecution takes place again; and
- A favourable environment should be created for civil society to effectively and freely exercise the right to freedom of association and to operate without hindrance.