

**To:**

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**Submission by  
International Partnership for Human Rights  
pursuant to Rule 9(2) of the Committee of  
Ministers' Rules for the Supervision  
of the Execution of Judgments**

**Comments on the execution of 20 judgments of the European  
Court of Human Rights in the Muradova group of cases**

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## I. Introduction

1. This document is submitted by the International Partnership for Human Rights (IPHR) pursuant to Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (10 May 2006). It concerns the execution of 20 judgments of the European Court of Human Rights in the group of cases of Muradova (no. 22684/05), Mammadov (Jalaloglu) (no. 34445/04) and Mikayil Mammadov (no. 4762/05) v. Azerbaijan, with the first case dating back to April 2007. These cases concern issues of excessive use of force by the security forces and the state's failure to effectively investigate allegations of ill-treatment, torture and death in custody. It also concerns disproportionate use of force by police during demonstrations, including against journalists.
2. International Partnership for Human Rights (IPHR) is an independent, non-governmental organization that 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. IPHR is committed to promoting human rights worldwide. It acts to empower local civil society groups who are working to advance the protection of human rights in their respective countries and assists them with raising human rights concerns at the international level. In cooperation with partner organizations, IPHR advocates on behalf of individuals and communities who are among those most vulnerable to discrimination, injustice and human rights violations.
3. This submission focuses on the issue of excessive force used by security forces in custody and the systemic failure to investigate such cases, and argues that such cases remain systemic and endemic in Azerbaijan, in absence of efficient general measures by the authorities. To date, the Government of Azerbaijan failed to submit a consolidated action plan in disregard of the request of the Committee of Ministers (CM) and limited its updates to information on the adoption of two executive orders in 2017 and 2018, which this submission assesses below.
4. This submission provides an overview of the latest relevant developments, identifies some of the gaps in the domestic legislation, and addresses issues of absence of effective legal safeguards against excessive use of force in custody and lack of effective domestic remedies to challenge it.

## II. Latest developments and tendencies: ill-treatment and torture in custody remains 'systemic and endemic'

5. Both the international monitoring bodies and the Azerbaijani human rights groups alert to the widespread and systemic nature of excessive force by security forces in Azerbaijan, and the authorities systemic failure to investigate such allegations. The CoE Committee for Prevention of Torture (CPT), which was authorized to publish its reports from 2004-2017 on Azerbaijan in 2018, concluded that: torture and other forms of physical ill-treatment by the police and other law enforcement agencies, corruption in the whole law enforcement system and impunity remain systemic and endemic.<sup>1</sup>

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1 CoE 2018 News 'Azerbaijan: torture, impunity and corruption highlighted in new anti-torture committee publications' <https://www.coe.int/en/web/cpt/-/azerbaijan-torture-impunity-and-corruption-highlighted-in-new-anti-torture-committee-publications>

6. As for investigations of allegations of ill-treatment and torture by detainees, in its 2017 report, the CPT concluded that ‘activities of the authorities empowered to conduct official investigations and bringing criminal and/or disciplinary charges in cases involving allegations of ill-treatment/torture are absolutely ineffective’.<sup>2</sup> It further stated that there have been no recent convictions of law enforcement officials for torture and other forms of ill-treatment which renders the situation in the country ‘exceptional in the entire Council of Europe’. In its 2016 report, the CPT found it ‘truly astonishing’ that out of 579 complaints, not a single one resulted in criminal prosecutions.<sup>3</sup>
7. In 2018, the UN Committee Against Torture (CAT) requested the Government of Azerbaijan to provide information on death allegations of a number of individuals and the outcome of investigations into their deaths.<sup>4</sup> The Government provided information on three cases (blogger Mehman Galandarov, Rashad Mehdiyev and lieutenant Tamkin Nizamioglu) stating that the investigations did not confirm the fact of the use of physical violence, concluding that no torture and inhuman treatment by security forces took place.<sup>5</sup> It did not provide any information on the remaining cases that the UN CAT inquired about.<sup>6</sup>
8. Azerbaijani human rights groups report on similar concerns of the increasingly widespread nature of ill-treatment and torture in custody, as well as repercussions against those who speak out about such cases on behalf of detainees, such as their lawyers or human rights defenders (see Section III and IV for further information on such cases).

### III. Failure to ensure effective legal safeguards against ill-treatment and torture: access to a lawyer

#### a) Access to a lawyer

9. Access to a lawyer is one of the fundamental rights guaranteed to each individual in custody, which, among others, will ensure that an individual is aware of his rights and may effectively prevent instances of mistreatment of individuals in custody. Accordingly, to be fully effective, the right of

<sup>2</sup> Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 30 October 2017, para 28, available at <https://rm.coe.int/16808c5e46>

<sup>3</sup> Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 March to 8 April 2016, para 28, available at <https://rm.coe.int/16808c5e43>

<sup>4</sup> UN Committee Against Torture List of issues prior to submission of the fifth periodic report of Azerbaijan. Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee’s previous recommendations. (Paragraph, 15). Individuals whose cases the UN CAT has sought information about were blogger Mehman Qalandarov; Rashad Mehdiyev; the journalist Rasim Aliyev; Farahim Bunyadov; Mehman Telman oglu Huseynov; Sahavat Binnatov; Colonel Saleh oglu Gafarov; Elchin Guliyev; Lieutenant Tamkin Nizamioglu; Dayndur Nuru oglu Azizli; and Bahruz Hajiyev

Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsusYiSuSrPLIzeM-6vyQJAlZyqE9ngqvNQEI%2bQbiYUMcyCc1Z%2fLdgUhOJ2xalB36HtTIWxd6tkq35oP02ekbZVuH8dWU1Ch%2fbVtdqa2F-OGA%2bk>

<sup>5</sup> Ibid, para 139, sections a, b, i

<sup>6</sup> Fifth Report of the Republic of Azerbaijan to the UN Committee Against Torture on 20 January 2020. In its report, government did not responded to the questions related to the investigations of the allegations of 8 military personal deaths in custody, the torture and ill-treatment allegations in the Nardaran and Ganja cases.

Available: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/CAT\\_C\\_AZE\\_5\\_7881\\_R.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/CAT_C_AZE_5_7881_R.pdf)

access to a lawyer should be guaranteed from the very outset of a person's deprivation of liberty.<sup>7</sup> In its reports on Azerbaijan, the CPT found that detainees are often denied access to lawyers of their choosing.<sup>8</sup> In its latest 2017 report, the CPT concluded that access to a lawyer, among other problems, as legal safeguards against ill-treatment "remain largely a dead letter and are mostly inoperative in practice."<sup>9</sup> It also found that such safeguards as notification of custody, access to a lawyer and information on rights are often delayed by several days and that is when the risk of ill-treatment is the highest, especially in cases of obtaining self-incriminating confessions from those arrested.<sup>10</sup>

10. Such practice continues to exist to date, and no measures have been taken by the Government to put an end to it, as documented through a number of recent cases exposing such practices in 2017-2019:

#### *Terter espionage case*

In 2017 military prosecutors and State Security Service of the Republic of Azerbaijan conducted a large-scale military-operative investigation against the military unit in Terter region on the allegations of espionage in favour of Armenian armed forces. There have been numerous media reports on the death, torture and other forms of ill-treatment in custody. According to the CPT report<sup>11</sup> in the Terter "espionage"<sup>12</sup> case, all of the tortured have been held in de facto incommunicado detention for periods of up to 2 months, unable to inform their relatives of their whereabouts.<sup>13</sup> All of them alleged that access to lawyers (exclusively ex officio ones) had only been granted to them with a very considerable delay, as late as a month after actual apprehension (and, invariably, only after they had agreed to sign the confession);<sup>14</sup> furthermore, they could only see their lawyers in the presence of the prosecutor or investigator.<sup>15</sup>

#### *Nardaran case*

On 25 January, 2017 the Baku Serious Crimes Court sentenced 18 men associated with the Shiite Muslim Unity Movement (MUM) in Nardaran village (also known as the Nardaran case) to lengthy prison terms, following a trial that did not meet international standards and was marred by torture allegations. The leader of the MUM, Taleh Bagirzade, and deputy chairman Abbas Huseynov were

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7 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Extract from the 21st General Report, § 19

8 Human Rights House World Report 2019: Azerbaijan, Torture and Ill-Treatment in Detention section <https://www.hrw.org/world-report/2019/country-chapters/azerbaijan>

9 Azerbaijan: Visit 2017 CPT/Inf (2018), A. Law enforcement agencies / 3. Safeguards against ill-treatment, paragraph 31

10 Ibid.

11 Azerbaijan: Visit 2017 CPT/Inf (2018), A. Law enforcement agencies / 3. Safeguards against ill-treatment, paragraph 36

12 See the news of Turan Information Agency, Hunger strike of a convict in the Terter case, published on 23 August 2019, <https://www.turan.az/ext/news/2019/8/free/Social/en/83284.htm>

13 After their trial, the detainees were sentenced to various terms of imprisonment. During the investigation, at least eight suspects were killed at the police custody. Subsequently, during the investigation, four of the killed were acquitted. See the news of Turan Information Agency, Hunger strike of a convict in the Terter case, published on 23 August 2019 <https://www.turan.az/ext/news/2019/8/free/Social/en/83284.htm>

14 The letters sent by the detained persons illustrate the brutal torture and ill-treatment of the detained. See the news of Turan Information Agency, Convict in the Terter case spoke about tortures, published on 10 January 2020, <http://www.turan.az/ext/news/2020/1/free/Social/en/86431.htm>

15 Azerbaijan: Visit 2017 CPT/Inf (2018), A. Law enforcement agencies / 3. Safeguards against ill-treatment, paragraph 36

sentenced to 20 years in prison.<sup>16</sup> Prior to the start of their trials, most of the defendants were not allowed to contact the outside world and had no access to lawyers of their choice. During the trial, the majority of the MUM defendants testified that they had been tortured or otherwise ill-treated with beating and electric shocks during their incommunicado detention lasting one month.<sup>17</sup> Several defendants later reported that their state-appointed lawyers failed to act in their best interest, for instance by signing records of interviews at the Main Organized Crime Department, allegedly involving the use of torture, that they had not attended.<sup>18</sup>

Both Abbas Huseynov and Taleh Bagirzade were kept incommunicado for two months. During this time, Abbas Huseynov's family and relatives had no information about his fate and whereabouts and thought he was dead.<sup>19</sup> The "confessions" extracted through torture and other ill-treatment have been used by the prosecution throughout the trial. The court has admitted these as prosecution evidence against the defendants in the trial.<sup>20</sup> Their complaints regarding ill-treatment and torture, and failure to ensure fair trial guarantees are currently pending before the ECtHR.

### *Ganja case*

On 3 July 2018, Yunis Safarov – a Russian citizen and resident of Ganja – made an attempt on the life of the then Head of Executive Power of Ganja – Elmar Valiyev (Ganja case). Safarov was arrested and severely beaten inside a Ganja police station.<sup>21</sup> Photographs of his injuries were distributed via social media, followed by calls to protest against his ill-treatment. On 10 July 2018, a group of 150 to 200 people came out to protest in front of the Ganja Executive Power building.<sup>22</sup> While dispersing the protesters the police has detained 100 protesters and bystanders and brought to Nizami Police Station in Ganja, where they were subjected to violence, degrading treatment and torture with the aim to extract confessions.<sup>23</sup> Detainees were interrogated without being offered legal assistance and then taken to court and sentenced to pre-trial detention during brief hearings, without a possibility of effective defence. Families had no access to detainees for at least 20 days after their arrest.<sup>24</sup>

11. According to the Working Group's report on the Unified List of Political Prisoners there were eight cases in which detainees could not access their lawyers and held in incommunicado for several days and were subject of torture, inhuman or degrading treatment.<sup>25</sup>

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16 Azerbaijan: Torture and Travesty of Justice in Nardaran Case, 6 February 2017, available at <https://www.refworld.org/docid/5899dc714.html>

17 Ibid.

18 Ibid

19 Ibid

20 Ibid

21 International Partnership for Human Rights' 2020 report, Azerbaijani government crackdown in Ganja: extrajudicial killings, torture, arbitrary detention, unfair trials and unlawful restrictions on the freedom of assembly, paragraph 7 <https://www.humanrightsclub.net/wp-content/uploads/2020/02/here.pdf>

22 Ibid. para 7

23 Ibid, para 7

24 Ibid, para 28

25 Working Group's report on the Unified List of Political Prisoners, Covering the period up to 25 November 2019: Case 3 at page 8: Afghan Sabir oglu Mukhtarli. Case 6 at page 13: Fuad Zafar oglu Ahmadli. The case 7 at page 14: Orkhan Rafiq oglu Bakhisli. Case 9 at page 17: Pasha Balamirza oglu Umudov. The cases relating financing of the opposition party in which 4 of arrested persons had been kept in incommunicado and could not access their lawyers, pages 19-22. The full list is available at <https://smdtaz.org/wp-content/uploads/2019/11/Political-Prisoners->

## **b) Lack of sufficient number of independent lawyers and ineffective representation by state-appointed lawyers**

12. A right to a lawyer in Azerbaijan in cases of ill-treatment and torture in custody is further aggravated by the fact that, firstly, Azerbaijan has a meagre number of licensed lawyers in general and human rights lawyers in particular, and secondly, the legal representation by the state-appointed lawyers in such cases is purely formal and often used to cover the use of excessive force by security officers.
13. In Azerbaijan, the low number of lawyers is a long-standing problem. According to the European Commission for the Efficiency of Justice report of 2014, Azerbaijan had the lowest number of lawyers per capita among the Council of Europe countries: the average number of lawyers per 100,000 people was 139, while in Azerbaijan it was about 10 per 100,000.<sup>26</sup> Even though in 2019, the number of members of the Azerbaijani Bar Association (ABA) increased by one third it is still very low.<sup>27</sup> Thus, the lack of lawyers negatively impacts people's right to access to legal assistance, including those in custody.
14. In recent years, independent lawyers in Azerbaijan, in particular those who publicly comment on human rights violations perpetrated against their clients in detention, such as ill-treatment and torture allegations, have been targeted by means of various sanctions leading to their disbarment, suspension of their licences, and civil or even criminal proceedings against them. The ABA, instead of protecting lawyers as their representative organisation, initiates disciplinary proceedings against lawyers in respect of actions undertaken for the legitimate defence of their clients (such as speaking to the media about the abuse of their clients' rights in detention), based on complaints submitted by the law enforcement bodies or individuals at the behest of such bodies. As a result of such sanctions, lawyers are no longer able to continue their defence work and challenge violations of rights of their clients in custody.
15. In her report of December 2019 following her visit to Azerbaijan, the Commissioner for Human Rights of the Council of Europe noted that "most of the lawyers recently disbarred or who had their licenses suspended are those working on cases considered to be politically sensitive" and "disciplinary proceedings are used as a tool for punishing lawyers who take on sensitive cases."<sup>28</sup>
16. By way of example, human rights lawyer Yalchin Imanov was indefinitely disbarred by the Ganja Administrative Economic Court on 22 February 2019 because of comments he had made to the media about the torture of his client Abbas Huseynov in the high-security Gobustan prison (see also information on the Ganja case above).<sup>29</sup> On 8 August 2017, when contacted by several media outlets, Imanov told them that his client Abbas Huseynov had complained of having been severely tortured by prison officials and that he himself had seen bruises all over his client's body. As a result, the Penitentiary Service requested the Azerbaijani Bar Association (ABA) to take disciplinary

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*Report-25.11.2019-WG-eng.pdf*

26 CEPEJ Report. "European judicial systems—Edition 2014 (2012 data): Efficiency and quality of justice", [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport\\_2014\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf), p. 377.

27 Azerbaijan Bar Association, official website: <http://www.barassociation.az/en/azecollegium> (Accessed on 2019).

28 COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, DUNJA MIJATOVIĆ, REPORT FOLLOWING HER VISIT TO AZERBAIJAN FROM 8 TO 12 JULY 2019, Section: Situation of lawyers, para 84, <https://rm.coe.int/report-on-the-visit-to-azerbaijan-from-8-to-12-july-2019-by-dunja-mija/168098e108>

29 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.

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, in January 2019, 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 Penitentiary Service by providing information to the media about the alleged torture of his client.

17. The licences of lawyers Nemat Karimli and Asabali Mustafayev have been suspended for one year in 2018 for statements denouncing human rights abuses perpetrated against their clients. Other lawyers, such as Fariz Namazli, Shahla Humbatova and Elchin Sadigov, have been threatened with disciplinary sanctions for their exercise of their right to freedom of expression regarding abuse of their clients in custody.<sup>30</sup> Such measures taken against human rights lawyers have a chilling effect on members of the ABA as well as on other prospective human rights lawyers.<sup>31</sup> Many of the punished lawyers, including Intigam Aliyev,<sup>32</sup> Asabali Mustafayev,<sup>33</sup> Elchin Sadigov,<sup>34</sup> Khalid Baghirov,<sup>35</sup> and Nemet Karimli<sup>36</sup> were representatives in the Muradova, Mammadov (Jalaloglu), and Mikayil Mammadov group of cases.<sup>37</sup>
18. Another issue of concern is the limited access given to lawyers to detention facilities to visit their clients. Despite the fact that the domestic law provides an exhaustive list of documents on the basis of which lawyers can access their clients in prisons, in practice, the prison authorities require a letter from the Penitentiary Service approving the access, which is not required by the law.<sup>38</sup> On some occasions the Penitentiary Service only provides such a letter with significant delays and in this way arbitrarily restricts the clients’ access to legal advice and representation, as well as prevents lawyers from fulfilling their professional duties of legal assistance to their clients in detention.

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30 Human Rights Watch report, Azerbaijan, Events 2019, Section: Intimidation of lawyers <https://www.hrw.org/world-report/2020/country-chapters/azerbaijan>

31 See the full list of disbarred, suspended or criminally prosecuted Azerbaijani human rights lawyers, available at <http://ehrac.org.uk/resources/disbarred-suspended-or-criminally-prosecuted-azerbaijani-human-rights-lawyers/>

32 In *Rizvanov v. Azerbaijan*, *Layjiov v. Azerbaijan*, and *Najafli v. Azerbaijan* cases Intigam Aliyev was the applicants’ representative who was arrested in 2014 and was conditionally released by the Supreme Court on 28 March 2016, after spending more than 19 months in detention.

33 In *Mustafayev v. Azerbaijan* and *Tahirova v. Azerbaijan* cases Asabali Mustafayev was the applicants’ representative whose license was suspended by the ABA 23 April 2018.

34 In *Emin Huseynov v. Azerbaijan*, *Uzeyir Jafarov v. Azerbaijan* cases, the applicants’ representative was Elchin Sadigov. On 25 February 2019, the ABA decided to punish Mr. Sadigov with a reprimand.

35 In *Hilal Mammadov v. Azerbaijan* case Khalid Bagirov was the applicant’s lawyer. The ABA lodged a request for Mr. Bagirov’s disbarment on 18 December 2014, and he was disbarred in a decision by the Nizami District Court on 10 July 2015.

36 In *Mustafa Hajili v. Azerbaijan* case Nemet Karimli was the applicant’s lawyer. On 23 April 2018, the ABA issued a decision to suspend the license of Nemat Kerimli for one year.

37 See the full list of disbarred, suspended or criminally prosecuted Azerbaijani human rights lawyers, available at <http://ehrac.org.uk/resources/disbarred-suspended-or-criminally-prosecuted-azerbaijani-human-rights-lawyers/>

38 In order to have access to a detained client, lawyers present their ID and the document proving their authority (i.e. license and an advocate’s order). No other documents, such as a letter from the Penitentiary Service, are required by the law. See Penal Code of the Republic of Azerbaijan Article 81.9.

19. Finally, ineffective and purely formal representation of individuals in custody who claim to have been ill-treated by security officials further adds to the systemic nature of the problem. The CPT in its 2017 report, concluded that “the Azerbaijani system of ex officio legal aid to persons deprived of their liberty continues to fail to operate as a safeguard against ill-treatment by law enforcement officials”.<sup>39</sup> For instance, in the above mentioned Ganja case, the state-appointed defence lawyers’ presence was a formality, as they failed to provide effective legal counselling, while lawyers of the victims’ choice were unable to effectively represent their clients.<sup>40</sup>

## IV. Absence of effective domestic remedies against ill-treatment and torture

### a) Lack of independent forensic examination

20. Absence of appropriate and timely medical forensic examinations and a failure to order and conduct a medical forensic examination in cases of ill-treatment and torture allegations in custody in Azerbaijan is one of the key issues identified by the ECtHR in the Muradova, Mammadov (Jalaloglu), and Mikayil Mammadov group of cases.<sup>41</sup> In its reports on Azerbaijan, the CPT concluded that such examinations in custody are ‘mostly superficial’ and that the state’s response to CPT’s repeated calls

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39 Azerbaijan: Visit 2017 CPT/Inf (2018), A. Law enforcement agencies / 3. Safeguards against ill-treatment, paragraph 34. “As on previous visits, the delegation was inundated with complaints about the role and attitude of ex officio lawyers; apparently, the lawyers mostly remained silent during the proceedings (both on the premises of law enforcement agencies and in court) and sometimes would not even speak to the detained persons (or tried to dissuade them from making any complaints).”

40 International Partnership for Human Rights’ 2020 report, Azerbaijani government crackdown in Ganja: extrajudicial killings, torture, arbitrary detention, unfair trials and unlawful restrictions on the freedom of assembly. Section: Trials, convictions and sentences, para 40 <https://www.humanrightsclub.net/wp-content/uploads/2020/02/here.pdf>

41 In the ECtHR judgments: *Mustafayev v. Azerbaijan*. Dated 4 May 2017, para 62 and 66. The domestic authorities did not fulfil their duty to safeguard the life of the applicant’s son by providing him with proper medical treatment in a timely manner. Thus, the State’s did not fulfil its obligation to protect the lives of persons in custody.

In *Sardar (Jalaloglu) v. Azerbaijan*. Dated 11 January 2007, para 65. The Court noted that ...no proper medical examination of the applicant was carried out when he was taken into custody.

In *Emin Huseynov v. Azerbaijan*. Dated 7 May January 2015, para 61-65. The Court found out that the Government could not explain why the forensic examination of the applicant was delayed.

In *Hilal Mammadov v. Azerbaijan*. Dated 4 February 2016, para 81-82. The Court noted that ...the forensic examination did not examine the applicant’s body and the tool used to injure the applicant.

In *Muradova v. Azerbaijan*. Dated 2 April 2009, para, 117-120. The Court noted the government could not to justify the delays of the forensic examination. Thus, the state authorities could not secure the forensic evidence in a timely manner is one of the important factors in assessing the overall effectiveness of an investigation into allegations of ill-treatment.

In *Rizvanov v. Azerbaijan*. Dated 17 April 2012, para, 47. The Court observed that the official forensic examination was ordered and carried out in a very belated manner...Here, the Court noted that, prompt forensic examination is crucial as signs of injury may often disappear rather quickly and certain injuries may heal within weeks or even a few days.

In *Tahirova v. Azerbaijan*. Dated 3 October 2013, para, 42. The Court did not accept medical examination of the applicant, more than five years after the incident. It is also notable that in this case the Government could not explain why it did not provide proper medical forensic examination of the applicant.

In *Igbal Hasanov v. Azerbaijan* and *Mehdiyev v. Azerbaijan* the Court observed that the domestic courts and the prosecuting authorities failed order a forensic examination of the applicants...First case - Dated 15 January 2015, para 39 and second case dated 18 June 2015, para, 67

for reforms remains unsatisfactory.<sup>42</sup> In its latest decision in this group of cases adopted at its 13-15 March 2018 meeting, the CM highlighted that the Government should ensure medical forensic examinations of the person, who alleged torture/inhuman or degrading treatment, in the presence of their defence lawyer.<sup>43</sup>

21. Conduct of forensic medical examination in Azerbaijan is regulated by the Law on Forensic Examination Activity of 18 November 1999 and the provisions of the Criminal Procedure Code (CPC).<sup>44</sup> The Law on Forensic Examination Activity was amended by the Parliament on 29 November 2019 allowing for alternative forensic examination only in administrative, civil, and administrative penalty cases, but not criminal cases.<sup>45</sup> In criminal cases, a forensic medical examination is carried out by the “Forensic Medical Expertise and Pathological Anatomy Association” under the Ministry of Health of Azerbaijan only. With this new regulation, this Law, however, is in contradiction with the CPC, which establishes a right of a suspect or an accused person to alternative forensic examination (expert) simultaneously to the forensic examination conducted/initiated by the investigator (Article 268 of the CPC). In its 2016 report, the CPT stressed that no barriers should be placed between persons who allege ill-treatment and doctors who can provide forensic reports having legal force. CPT also emphasized that the carrying out of forensic examinations being impossible without authorization from an investigating or judicial authority is in disregard of the individuals’ rights stipulated in the CPC.<sup>46</sup>
22. Furthermore, according to Article 97.1 of the CPC, an expert is a person ... ‘who is appointed by the body conducting the criminal proceedings or the management of the expert institution at his request’. The expert representing the institution of the state authority is therefore not only selected but also appointed by the head of the respective expert institution, which further diminishes the independence of the expert from the respective institution.
23. Such a contradiction in the domestic law and the distinction made between criminal and other cases when the vast majority of ill-treatment and torture allegations take place in criminal cases with individuals in custody prevents the victims from an independent forensic medical examination. As documented in many such instances, state-appointed experts conduct examinations in favour of policemen or prison officers and fail to take the victims’ version into account. This creates a serious barrier for the equality of arms in the collection of evidence and the appointment of forensic experts for accused or suspect person because unlike the investigator and the prosecutor, the representatives of the defence are deprived of the right to appoint an expert independently, to participate in their conduct, to consult with forensic medical experts who have promised not to disseminate preliminary investigation information. By working directly with the investigator at all stages of the investigation, the forensic expert becomes a participant in the investigation and not an independent expert.

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42 Azerbaijan: Visit 2017 CPT/Inf (2018) 37 | Section: 8/18 | Date: 26/03/2018, A. Law enforcement agencies / 3. Safeguards against ill-treatment, Executive Summary, page 5.

43 The CM’ 1310<sup>th</sup> meeting, 13-15 March, para 1

44 Law of the Republic of Azerbaijan No. 907-IQ of July 14, 2000 “On Approval, Entry into Force and Related Legal Regulation of the Criminal Procedure Code of the Republic of Azerbaijan” (Code of Criminal Procedure).

45 The amendments made on Law on Forensic Examination Activity. 29 November 2019, available in Azerbaijani at: <http://www.e-qanun.az/framework/91>

46 Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 March to 8 April 2016, para 36, available at <https://rm.coe.int/16808c5e43>.

24. Accordingly, the Law on Forensic Examination Activity Law must be amended to allow alternative forensic examination to suspects and accused persons independently from the authorization of investigation or court authorities.

## **b) Access to a doctor**

25. According to the CPT visits in Azerbaijan in 2011,<sup>47</sup> 2012,<sup>48</sup> 2015,<sup>49</sup> and 2017<sup>50</sup> access to a doctor, a thorough examination of detained persons, methodical recording of injuries and the provision of information to the relevant authorities have not been fulfilled. Such instances have also been recorded by human rights groups in the cases referred above.<sup>51</sup>
26. In the Terter espionage, Ganja, and Nardaran cases in which the defendants were subjected to extensive physical and psychological pressures were not provided with adequate medical assistance. In Terter espionage case, the soldiers have been held in de facto incommunicado detention for periods of up to 2 months, unable to inform their relatives of their whereabouts,<sup>52</sup> and eight of them were tortured to death.<sup>53</sup> Thus, it is highly possible that they were denied any kind of medical assistance during that time.
27. In Ganja case, "Detainees were held in overcrowded cells, corridors, and cages. They were bound, denied food, water and vital medical care for prolonged periods." At the pre-trial detention facility detainees were kept in overcrowded cells, denial of adequate medical treatment, denial of food and water, being handcuffed to the bed or other furniture, being routinely beaten and insulted by guards or prevented from sleeping.<sup>54</sup>
28. In Nardaran case, the detainees have complained that the authorities denied them access to necessary medical care, including surgical procedures to remove bullets from their bodies and access to medication.<sup>55</sup> Furthermore, one of the lawyers, Yalcin Imanov, in this case was disbarred

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47 Azerbaijan: Visit 2011 CPT/Inf (2018) 9 | Section: 7/33 | Date: 25/07/2012, A. Establishments under the authority of the Ministry of Internal Affairs / 3. Safeguards against ill-treatment, paragraphs 25-26

48 Azerbaijan: Visit 2012 CPT/Inf (2018) 29 | Section: 10/15 | Date: 19/03/2013, D. Safeguards against ill-treatment by the police, para 40

49 Azerbaijan: Visit 2015 CPT/Inf (2018) 33 | Section: 6/17 | Date: 25/11/2015 3. Conditions of detention in the establishments visited / a. introduction para 45-48

50 Azerbaijan: Visit 2017 CPT/Inf (2018) 37 | Section: 8/18 | Date: 26/03/2018, A. Law enforcement agencies / 3. Safeguards against ill-treatment, para 29 and 37

51 International Partnership for Human Rights' 2020 report, Azerbaijani government crackdown in Ganja: extrajudicial killings, torture, arbitrary detention, unfair trials and unlawful restrictions on the freedom of assembly, paragraph 32-37 <https://www.humanrightsclub.net/wp-content/uploads/2020/02/here.pdf>

And Azerbaijan: Torture and Travesty of Justice in Nardaran Case, 6 February 2017, available at <https://www.refworld.org/docid/5899dc714.html> Section: Denial of Necessary Medical Care

52 Azerbaijan: Visit 2017 CPT/Inf (2018) 37 | Section: 8/18 | Date: 26/03/2018, A. Law enforcement agencies / 3. Safeguards against ill-treatment, para 36

53 Protesters in Baku support convicts in "Tartar case", 28 May 2019, available at: <https://www.eng.kavkaz-uzel.eu/articles/47308/>

54 International Partnership for Human Rights' 2020 report, Azerbaijani government crackdown in Ganja: extrajudicial killings, torture, arbitrary detention, unfair trials and unlawful restrictions on the freedom of assembly, paragraph 61 <https://www.humanrightsclub.net/wp-content/uploads/2020/02/here.pdf>

55 Azerbaijan: Torture and Travesty of Justice in Nardaran Case, 6 February 2017, Section: Denial of Necessary Medical Care, available at <https://www.refworld.org/docid/5899dc714.html>

from the ABA after he publicly reported about his client's torture in prison.<sup>56</sup> Other lawyers reported that they have been threatened with disbarment.<sup>57</sup>

### **c) Lack of accountability leading to prevailing impunity: failure to effectively investigate allegations of torture and other forms of ill-treatment**

29. At its 1310<sup>th</sup> meeting (March 2018) (DH), the Committee noted with concern that no tangible information had been provided in these cases since 2010 (Mikayil Mammadov and Mammadov (Jalaloglu)) and 2013 (Muradova group). Consequently, it urged the authorities to provide, without further delay, information on the investigations that were re-opened and explanations of how these re-opened investigations comply with Convention requirements, including how the institutional independence of the investigating bodies is ensured, as well as on the payment of the just satisfaction. No information has been provided by the Government to date.
30. In its 2016 report, the CPC noted that (para 28) "as regards impunity, the CPT is struck by the data provided by the Azerbaijani authorities at the outset of the visit: out of 579 complaints against the police received by the Prosecutor General's Office in the period from 1 January 2014 to 1 April 2016, not a single one resulted in criminal prosecutions for ill-treatment/torture. Likewise, among 1,883 police officers punished disciplinarily between 1 January 2010 and 1 January 2016, none had been sanctioned for ill-treatment/torture of a person in his/her custody; this is truly astonishing.<sup>58</sup> The CPT recommended the Azerbaijani authorities to take steps to establish trust in law enforcement agencies by providing information to the public on the outcome of investigations into complaints of ill-treatment by law enforcement officials.<sup>59</sup> The CPT report noted that in Azerbaijan officials are not held to account for their actions and concluded that, at present, such activities are absolutely ineffective.
31. In July 2019, in its public speech, Minister of Internal Affairs noted that during the last five years and the first half of 2019 alone, 2,040 employees have been subjected to disciplinary investigation for 'rude' behaviour with citizens and various offenses. The Minister noted that no cases of torture or ill-treatment of detainees were recorded.<sup>60</sup> According to the 2018 annual report of the Azerbaijani Ombudsman, 399 police officers were disciplined in Azerbaijan for rude treatment of citizens (on 67 facts), unjustified summon and detention (on 79 facts), opening unjustified criminal prosecution (on 8 facts).<sup>61</sup>
32. According to Azerbaijan's recent report to the UN Committee Against Torture on 20 January 2020, the number of appeals received by the Main Directorate of the Prison Service in connection with cases of torture and ill-treatment was as follows: 43 complaints in 2014; 25 complaints in 2016;

56 Human Rights Watch report, Azerbaijan, Events 2019, Section: Intimidation of lawyers <https://www.hrw.org/world-report/2020/country-chapters/azerbaijan>

57 Azerbaijan: Torture and Travesty of Justice in Nardaran Case, 6 February 2017, Section: Harassment of lawyers and critics, available at <https://www.refworld.org/docid/5899dc714.html>

58 Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 March to 8 April 2016, Para., 28, available at <https://rm.coe.int/16808c5e43>.

59 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Extract from the 21st General Report, § 28

60 Vilayat Eyvazov: "2040 police officers were prosecuted for violating citizens rights, 10 July 2019, <http://transparency.az/vilayat-eyvazov-vetendas-huquqlarini-pozduqlarina-gore-2040-polis-mesuliyete-celb-olunub/>

61 Ombudsman's 2018 Annual Reports available at: <http://www.ombudsman.gov.az/az/view/pages/59/>

22 complaints in 2017 and 19 complaints in 2018. It was reported by the authorities that only two prison officials, among all these complaints, were subjected to disciplinary proceedings during 2014-2018 years, however, no reasoning or any further details were provided.<sup>62</sup>

33. Such official records on the number of disciplinary cases against law enforcement officials, with no identified cases of ill-treatment and torture in the face of numerous complaints, credible testimonies from victims and CPT findings cast serious doubts on the credibility of such investigations and reported findings of official reports.
34. One of the key challenges to ensuring effective investigation of torture and other forms of ill-treatment allegations is that they are not investigated by independent investigatory bodies. According to Article 215.7 of the CPC, in order to conduct a thorough, fully objective preliminary investigation of a criminal case, the case may be transferred from the relevant investigative authority to another investigative authority if it is established that the accused is arrested unlawfully or tortured by the investigation authority concerned. In other words, preliminary complaints of a suspect or accused about torture and ill-treatment does not provide for such opportunity – investigation of the allegations by the other investigation authority – unless torture or ill-treatment allegations are confirmed.
35. In the case of preliminary complaints and allegations about torture and other forms of the ill-treatment in custody, there are no mandatory and clear guiding rules for the law enforcement officials to conduct independent and effective investigations. In such a situation, it would be difficult to investigate allegations of torture with only two interrogative actions allowed by criminal procedure law before a criminal case could be instituted following the ECtHR's standard of effective investigation. However, if an investigation into allegations of ill-treatment is initiated with a criminal case, the investigation will have access to all investigative and other procedural actions, the transparency of the investigation, including the complainant's better participation in the investigation, will ensure the quality of the investigation.
36. Another problematic issue regarding the investigation of allegations of torture and other forms of ill-treatment is the position of the Azerbaijani law enforcement officials, including courts, concerning the burden of proof standard. Article 125.8 of the CPC provides that if the evidence is obtained following the requirements of the Code, it shall be for the objecting party to demonstrate grounds for its refusal. That is, if the accused or defence counsel claims that the evidence is inadmissible, citing the fact that the evidence was obtained under the influence of torture, the burden of proof falls on the defence. However, according to the ECtHR, in these cases, the state, i.e. the public prosecutor, must substantiate that the person is not right in the claim, and he must bear the burden of proof.

#### **d) Effectiveness of oversight bodies (National Preventive Mechanism) and other preventive actions taken by the authorities**

37. Under this group of cases, the CM urged the Government to take steps to ensure the prevention of torture / inhuman or degrading treatment against detained or arrested persons.<sup>63</sup> One of the

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62 Azerbaijan's fifth report to the UN Committee Against Torture. 20 January 2020, Para., 59 and 83. Available at: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/CAT\\_C\\_AZE\\_5\\_7881\\_R.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/CAT_C_AZE_5_7881_R.pdf)

63 The CM' 1310th meeting, 13-15 March, para 3

effective methods of doing is to initiate investigations into allegations of torture / inhuman or degrading treatment.<sup>64</sup>

38. In the Action Plan dated on 28 February 2018, the Ministry of Internal Affairs and General Prosecutor's Office pledged that they would keep under their control the execution of such important provisions as the prohibition of torture and other cruel, inhuman or degrading treatment, or of other offensive acts against them, and observance of rules of ethics in such important matters.<sup>65</sup> Furthermore, both the Prosecutor's Office and the Ministry of Internal Affairs stated that they would initiate a criminal investigation into the alleged fact of torture and bring those responsible to account.<sup>66</sup> However, the CPT observed that almost 16 years after the Committee's first visit to Azerbaijan, such findings as torture and other forms of physical ill-treatment by the police and other law enforcement as generalized culture of violence, ignoring complaints about ill-treatment by prosecutors, and impunity of the law enforcement agencies remain systemic and endemic.<sup>67</sup>
39. The Government's Action Plan submitted in this group of cases, however, does not elaborate on any specific measures to be taken to put an end to this endemic problem. In its Action Plan, the Government referred to the Presidential Executive Order<sup>68</sup> and the Joint Order<sup>69</sup> of the Ministry of Internal Affairs of AR and Prosecutor General Office of AR as key developments so far taken as general measures in that regard. According to the Executive Order, the Ministry of Justice implemented a training program for the staff and medical staff of penitentiary, development of medical equipment and conditions of detention<sup>70</sup> and organized special exams for recruitment to the penitentiary system.<sup>71</sup> It is however, unclear how this in any way demonstrates any progress in seeking to end the widespread problem of use of excessive force and prevailing impunity with no effective investigations. The Joint Order referred to by the authorities as part of general measures in this group stated that reports about the results of measures implemented would be produced twice a year.<sup>72</sup> Two years later no report(s) have been publicized neither by the Prosecutor Office and nor the Ministry of Internal Affairs.
40. By the Constitutional Law of 24 June 2011, Azerbaijan has established a National Preventive Mechanism (NPM) within the Ombudsman institution empowered to conduct monitoring of places of detention without prior notification. The UN Human Rights Committee expressed concerns about the limited effectiveness of the national preventive mechanism.<sup>73</sup> Other international

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64 The CM' 1310th meeting, 13-15 March, para 4

65 The Government's Action Plan, page 4, para 2

66 The Government's Action Plan, page 4, para 3-4

67 Azerbaijan: Visit 2017 CPT/Inf (2018) 37 | Section: 8/18 | Date: 26/03/2018, A. Law enforcement agencies / 3. Safeguards against ill-treatment, para 27

68 Executive Order no. 2668 "On improvement of operation of penitentiary, humanization of penal policies and extension of application of alternative sanctions and noncustodial procedural measures of restraint", dated 10 February 2017, the president of the Republic of Azerbaijan instructed the Ministry of Justice of the Republic of Azerbaijan to strengthen control of detention conditions of convicts and arrested persons, their food supply, medical and welfare support

69 Joint Order of the Prosecutor General and the Minister of Internal Affairs Joint Order "On additional measures to secure the rights of arrested and detained individuals", dated 27 January 2018

70 The Government's Action Plan, page 2, para 2

71 The Government's Action Plan, page 2, para 3

72 The Government's Action Plan, page 4, para 5

73 Human Rights Committee. Concluding observations on the fourth periodic report of Azerbaijan. 16 Para., 18.

human rights organizations also assessed the NPM's role as ineffective in addressing issues such as torture and ill-treatment in places of deprivation of liberty.<sup>74</sup>

41. The annual report (2018) of the Ombudsman on the state of ensuring and protection of human rights and freedoms in Azerbaijan indicates that the Ombudsman conducted a total of 343 visits to the detention/prison facilities during a year. However, the annual report does not indicate any ill-treatment or torture complaints or allegations.<sup>75</sup> Study of the Ombudsman's annual reports<sup>76</sup> from 2014 to 2018 shows that all reports contained the same language with no allegations or incidents in relation to ill-treatment of torture in detention/prison facilities despite a number of prominent cases that received publicity in the country, including those cited above in this submission.

## V. Conclusions and Recommendations

The CM is requested to scrutinize Azerbaijan's actions in this group of cases on the basis of CPT reports, as credible and now publicly available evidence indicating the systemic and endemic problem. As such practices continue on a wide scale to date, the CM should have this group of cases on its agenda at every DH meeting until genuine progress by the authorities is proven.

The CM should also call upon the Government to:

1. Amend the Code of Criminal Procedure to increase the accountability of the law enforcement authorities regarding conducting an independent and effective investigation in the allegations of torture and other forms of ill-treatment, including:
  - a. Amend the CPC and appropriate legislation to allow alternative forensic examination in all criminal cases, so individuals entitled to request and receive an examination by independent medical expertise in full confidentiality;
  - b. Amend the CPC (Article 207.4) and allow law enforcement authorities to conduct a full and comprehensive investigation on the allegations concerning torture and other forms of ill-treatment;
  - c. Amend appropriate legislation and allow independent human rights organizations to carry out visits to detention and prison facilities and conduct a confidential meeting with detainees and prisoners;
  - d. Put an immediate end to the current approach of the confessions-based criminal justice system which encourages law enforcement officials to extract confessions, and ensure that the law enforcement officials have adequate access to and the know-how to use modern approaches to criminal investigations;

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Available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhshv33kpjIN1yQcFINQGeFnqM5IxR4PQMZWvxmowXyTsshELrTf/HJH/qlql6FD8OFwu28r7IZSIAYRm9fDeUVCTGadLoglKdYRd4jrLMRra>

74 Contribution to the List of Issues Prior to the Submission of the Periodic Report of Azerbaijan By Institute for Peace and Democracy (IPD), International Partnership for Human Rights (IPHR), World Organisation against Torture (OMCT), 63rd Session of the Committee against Torture January 2018, available Para., 9. Available at: [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/INT\\_CAT\\_ICS\\_AZE\\_30118\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/INT_CAT_ICS_AZE_30118_E.pdf)

75 The Commissioner for Human Rights, Annual reports, 2018, pages 15-17: Activity of the Commissioner as the National Preventive Mechanism for prevention of torture and other cruel, inhuman or degrading treatment or punishment, available at <http://www.ombudsman.gov.az/en/view/pages/59/>

76 The Commissioner for Human Rights, Annual reports. Available at: <http://www.ombudsman.gov.az/en/view/pages/59>

2. End the practice of searching of lawyers before and after meeting with detainees/prisoners, including facilitate the procedures for prisoners and detainees to meet with lawyers without barriers or delay;
3. Amend and strengthen criminal responsibility for the law enforcement officials for torture and other forms ill-treatment and ensure that officials are not held accountable only through disciplinary punishments.