



Provisional version

## Committee on Legal Affairs and Human Rights

### Reported cases of political prisoners in Azerbaijan

#### Report\*

Rapporteur: Ms Thorhildur Sunna ÆVARSDÓTTIR, Iceland, Socialists, Democrats and Greens Group

#### A. Draft resolution

1. The issue of reported cases of political prisoners in Azerbaijan has been of acute concern to the Council of Europe since before the country acceded to the organisation. Opinion 222 (2000) called on Azerbaijan “to release or to grant a new trial to those prisoners who are regarded as ‘political prisoners’ by human rights protection organisations”. The then Secretary General, following a decision of the Committee of Ministers, appointed three independent experts to examine cases. These concerns persisted during the years that followed. Resolution 1272 (2002) called on Azerbaijan “to show a stronger political will to solve the problem in its entirety”; in Resolution 1359 (2004), the Assembly urged Azerbaijan “to find a lasting solution to this problem”; and Resolution 1457 (2005), the Assembly “firmly [condemned] the serious dysfunctions of the Azerbaijani judicial system”, noting that “the Azerbaijani authorities have continued to arrest and convict hundreds of persons for clearly political reasons”. The Assembly has continued to express concern in recent years, as shown by Resolution 2184 (2017), and Resolution 2185 (2017), in which it called on Azerbaijan to “release human rights defenders, journalists and civic and political activists who were imprisoned on politically motivated grounds”.

2. In recent years, the European Court of Human Rights has issued a very large number of judgments finding violations of the European Convention on Human Rights arising from arbitrary arrest and detention of opposition politicians, civil society activists, human rights defenders and critical journalists, often combined with violations of their freedoms of expression or assembly. Six of these judgments, in a total of nine cases, exceptionally found violations also of Article 18 of the European Convention on Human Rights based on the authorities’ misuse of criminal law provisions on arrest and detention for purposes not permitted under the Convention. In one of these six judgments, the European Court of Human Rights stated that there was 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”. The European Court of Human Rights therefore called on Azerbaijan to implement general measures focusing, “as a matter of priority, on the protection of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention. The measures to be taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non-repetition of similar practices in the future.”

3. Many of the judgments of the European Court of Human Rights finding arbitrary arrest and detention in Azerbaijan concern administrative detention. These judgments stated that the unfounded arrest and detention of the applicants, without proper judicial scrutiny, would have discouraged them from participating in political rallies and could deter other opposition supporters and the public at large from attending demonstrations and participating in open political debate, in violation of the freedom of assembly. In its supervision of implementation of these judgments, the Committee of Ministers has referred to “the structural problems revealed by the present group of cases”.

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\* Draft resolution and draft recommendation adopted unanimously by the committee on 10 December 2019.

4. The judgments of the European Court of Human Rights finding a violation of Article 18, and those in very many other judgments finding arbitrary detention, establish facts that clearly satisfy the Assembly's definition of 'political prisoner', as set out in Resolution 1900 (2012). The Court's mention of a number of further pending cases raising similar issues, its description of a "troubling pattern", and its call for general measures to address the causes, along with the Committee of Ministers' reference to "structural problems" underlying misuse of administrative detention, show that fundamental reforms are necessary if Azerbaijan is to fulfil its obligations under the European Convention on Human Rights.

5. In the first case in which it found a violation of Article 18, the European Court of Human Rights has also issued a ruling under Article 46(4) of the European Convention on Human Rights that Azerbaijan had refused to abide its earlier judgment. The Assembly is concerned that five and a half years after the original judgment, and over two years since the Article 46(4) ruling, important individual measures have still not been taken to restore fully the situation of the applicant, Mr Ilgar Mammadov. This is true also for two other applicants in cases in which the European Court of Human Rights found violations of Article 18, Mr Anar Mammadli and Mr Rasul Jafarov.

6. The Assembly also notes the various lists of reported political prisoners that have been maintained by national and international civil society organisations. It considers that the Court's numerous judgments, and in particular its finding of a "troubling pattern", confirm the credibility of the most extensive, detailed and regularly updated lists. It concludes that persons featuring on these lists can be presumed to be political prisoners whose detention violates their human rights and who should therefore be released. It acknowledges that this presumption is rebuttable, but only after careful review of the cases by an independent and impartial body. By accepting this approach, the Azerbaijani authorities would demonstrate their willingness to resolve individual cases without the need for intervention by the European Court of Human Rights. This would, furthermore, be in accordance with the principle of subsidiarity underpinning the protection system of the European Convention on Human Rights.

7. The Assembly recalls the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) showing that detainees, including political prisoners, are at risk of inadequate conditions and serious ill-treatment in Azerbaijani police stations, pre-trial detention centres and prisons. It underlines that the exercise of the fundamental freedoms of expression, assembly and association should not depend on whether one is brave enough to face such risks.

8. The Assembly notes the repeated use of presidential pardons to release convicted prisoners, including many who were reported to be political prisoners. Whilst the release of wrongly imprisoned people is always welcome, presidential pardons, which are often conditional on an apology, do not fully erase the effects of injustice and their extensive use casts doubt on the proper functioning of the criminal justice system. They are no substitute for an independent judiciary that prevents unjust and politically motivated detention in the first place.

9. The Assembly welcomes the steps taken by the Azerbaijani authorities in recent years to reform its penitentiary, criminal justice and judicial systems, including the Executive Order of 2017 and the Presidential Decree of 2019. It welcomes, for example, the measures taken to increase judicial independence and the reform of the Law on the Prosecutor's Office to remove the reference to its "oversight" by the President. It welcomes the decrease in the number of people who are arrested or in custody and the judges' increasing willingness to decline prosecution requests for pre-trial detention orders. It is yet to be convinced, however, that the measures taken thus far will suffice to achieve the specific results required by the European Court of Human Rights. It will therefore continue to follow developments closely and looks forward to co-operating with the Azerbaijani authorities in this respect.

10. When Azerbaijan joined the Council of Europe, it recognised the existence of political prisoners and co-operated on measures to release them. Since then, its position has shifted to one of denial. With the numerous recent Court judgments, in particular those finding violations of Article 18, that position is no longer tenable. There can no longer be any doubt that Azerbaijan has a problem of political prisoners and that this problem is due to structural and systemic causes. Recent reforms are welcome, but much more remains to be done if the problem is to be fully and durably resolved.

11. The Assembly therefore calls on:

11.1. The Azerbaijani parliament and its members and the Azerbaijani government to recognise formally all of the findings of the European Court of Human Rights in its judgments establishing a

violation of Article 18, including the existence of the “troubling pattern”, as a necessary precondition for the success of the measures required to implement those judgments fully and effectively;

11.2. The members of the Azerbaijani delegation to the Parliamentary Assembly and their colleagues in the Azerbaijani parliament to use their legislative and executive oversight roles to ensure that all necessary measures are taken to implement fully and effectively the Court’s judgments and prevent further recurrence of politically motivated arbitrary detention;

11.3. The Azerbaijani delegation to the Parliamentary Assembly to co-operate with the rapporteur in the course of her work on follow-up to the present resolution, in accordance with Rule 50(1) of the Rules of Procedure, including by providing information on the activities of the Azerbaijani parliament and other authorities to implement this resolution;

11.4. The Azerbaijani government to:

11.4.1. Subject the cases of persons on the most extensive, detailed and regularly updated lists of alleged political prisoners to review by an independent and impartial body and to release those found to be political prisoners in accordance with the definition set out in Resolution 1900 (2012);

11.4.2. Take a holistic approach, addressing problems relating to the judiciary, the Prosecutor General’s office, the police, the detention system and administrative detention together in a coherent and co-ordinated way, so as to ensure the non-repetition of politically motivated arbitrary detention, as required by the European Court of Human Rights;

11.4.3. Take promptly every possible step towards full implementation of the judgments of the European Court of Human Rights, so as to ensure, amongst other things, that Mr Ilgar Mammadov and Mr Anar Mammadli may stand as candidates in the forthcoming parliamentary elections and that Mr Rasul Jafarov can resume his professional activities as a lawyer;

11.4.4. Co-operate fully with the Committee of Ministers in its supervision of the implementation of judgments of the European Court of Human Rights, especially under its enhanced procedure, including by promptly submitting detailed and comprehensive action plans setting out the measures to be taken and by providing full and up-to-date information in good time before relevant meetings of the Committee of Ministers.

12. The Assembly encourages the co-rapporteurs on Azerbaijan of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe and the rapporteur on implementation of judgments of the European Court of Human Rights of the Committee on Legal Affairs and Human Rights to take account of the present resolution in their work.

**B. Draft recommendation**

1. Referring to its Resolution ... (2019) on “Reported cases of political prisoners in Azerbaijan”, the Parliamentary Assembly:

1.1. Recalls the judgments of the European Court of Human Rights against Azerbaijan in which it found violations of Article 18 of the European Convention on Human Rights;

1.2. Welcomes the Committee of Ministers’ decision to supervise implementation of these judgments, as well as the *Gafgaz Mammadov* group of judgments concerning administrative detention, under its enhanced procedure; welcomes its close attention to both individual measures and the general measures required to resolve the structural and systemic problems that those judgments reveal;

1.3. Encourages the Committee of Ministers to ensure that the measures to be taken to implement the judgments in the Article 18 cases will allow for the applicants to stand as candidates in the forthcoming parliamentary elections, whenever they take place.

## C. Explanatory memorandum by Ms Thorhildur Sunna ÆVARSDÓTTIR, Rapporteur

### 1. Introduction

#### 1.1. Procedure

1. On 1 June 2018, the motion for a resolution on “Political prisoners in Azerbaijan” ([Doc. 14538](#)) was referred to the Committee on Legal Affairs and Human Rights for report.<sup>1</sup> I was appointed rapporteur by the Committee at its meeting in Strasbourg on 26 June 2018.

2. During the preparation of the report, the Committee, jointly with the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (the Monitoring Committee), held a hearing with experts on 9 April 2019, in which Mr Otari Gvaladze of the Azerbaijani Presidential Administration participated, along with former political prisoners Ms Leyla Yunusova, Mr Ilgar Mammadov (by video-conference) and Mr Rasul Jafarov.<sup>2</sup> I conducted a fact-finding visit to Azerbaijan on 4-7 September 2019, during which I met Ms Bahar Muradova, Deputy Chairperson of the Milli Mejlis and chairperson of its Committee on Human Rights; Mr Ali Huseynli, chairperson of the Milli Mejlis Committee on Legal Policy and State Building; and Mr Samad Seyidov, chairperson of the Azerbaijani delegation to the Parliamentary Assembly, along with other parliamentarians; as well as representatives of the Supreme Court, the Ministry of Justice, the Prosecutor General’s office and the Presidential Administration. I also met members of the diplomatic community in Baku, human rights defenders and civil society activists, and NGO representatives. I also visited four current detainees who are widely considered to be political prisoners: Mr Taleh Bagirzade, Mr Abbas Huseynov, Mr Afgan Mukhtarli and Mr Said Dadashbaylii. I would like to take this opportunity to thank the Azerbaijani delegation, in particular Mr Seyidov, and authorities for their co-operation before and during my visit, as well as all those whom I met – notably the detainees – for their time and contributions to my work.

#### 1.2. Background

3. The issue of political prisoners in Azerbaijan has been of acute concern to the Council of Europe since before the country’s accession. In its Opinion 222 (2000) on Azerbaijan’s application for membership of the Council of Europe, the Assembly called on Azerbaijan “to release or to grant a new trial to those prisoners who are regarded as ‘political prisoners’ by human rights protection organisations”. Those who had been imprisoned before Azerbaijan joined the Council of Europe would not, however, have recourse to the European Court of Human Rights (the Court) as a remedy against violations unresolved by the domestic courts, since accession to the European Convention on Human Rights (the Convention) does not create retrospective rights or obligations.

4. In February 2001, therefore, following a decision of the Committee of Ministers, the then Secretary General of the Council of Europe appointed three international experts<sup>3</sup> to “prepare a confidential opinion on [cases of alleged political prisoners in Azerbaijan, and also in Armenia] indicating whether the persons in question may be defined as political prisoners on the basis of objective criteria in the light of the case-law of the European Court of Human Rights and Council of Europe standards.” The experts presented their report to the Secretary General in July 2001. Faced with over 700 cases, the experts selected 23 ‘pilot cases’ on the basis of their being “typical cases linked to specific historical events”. 17 of the 23 ‘pilot cases’ were found to be political prisoners (including the three people specifically mentioned in Opinion 222 (2000)), with the assumption that “other persons held in the same or similar circumstances are also political prisoners”. Another five were found not to be political prisoners, and the final case was ‘struck off’ due to lack of information. Armenia released all the persons identified as “political prisoners” but Azerbaijan did not.

5. Since then, the Assembly has continued to follow the issue closely. In its [Resolution 1272 \(2002\)](#) on political prisoners in Azerbaijan, adopted six months after the independent experts’ report, it noted that only six of the seventeen ‘pilot case’ political prisoners had yet been released, out of a total of around 220 assumed political prisoners. The three individuals named in Opinion 222 (2000) had not been released. The

<sup>1</sup> Reference to Committee No. 4386 of 1 June 2018.

<sup>2</sup> See below for further details of these individual’s cases before the European Court of Human Rights and my own conclusions regarding their status.

<sup>3</sup> The experts were Professor Stefan Trechsel, University of Zurich, former President of the European Commission of Human Rights; Professor Evert Alkema, University of Leiden, extraordinary member of the Dutch Council of State and former member of the European Commission of Human Rights; and Mr Alexander Arabadjiev, former judge at the Constitutional Court of Bulgaria and former member of the European Commission of Human Rights.

Assembly therefore called on Azerbaijan “to show a stronger political will to solve the problem in its entirety” and resolved “to take any appropriate measures at its disposal in order to persuade the Azerbaijani authorities of the need to release or retry any prisoner regarded as a political prisoner.” By January 2004, when the Assembly adopted [Resolution 1359 \(2004\)](#), 284 further political prisoners had been released, although six of the ‘pilot cases’ identified in July 2001 were still in prison. The Assembly therefore “[urged] the authorities of Azerbaijan to find a lasting solution to this problem and [deplored] the fact that they continue to maintain that the problem raised is primarily a legal one and that, moreover, the majority of these prisoners are genuine criminals, and that it will take months, even years, to have all these prisoners released because of the alleged pressure of public opinion”. It also expressed its “utmost concern” at reports of new cases of political prisoners. The situation had deteriorated further by June 2005, when the Assembly adopted [Resolution 1457 \(2005\)](#) on follow-up to Resolution 1359 (2004), in which it “firmly [condemned] the serious dysfunctions of the Azerbaijani judicial system”, noting that “the Azerbaijani authorities have continued to arrest and convict hundreds of persons for clearly political reasons”.

6. Most recently, the Assembly returned to the issue in [Resolution 2184 \(2017\)](#) on the functioning of democratic institutions in Azerbaijan, in which it “[remained] concerned about the reported prosecution and ongoing detention of NGO leaders, human rights defenders, political activists, journalists, bloggers and lawyers, based on alleged offences in relation to their work”, and called on the Azerbaijani authorities to “review the cases of the so-called “political prisoners”/“prisoners of conscience” detained on criminal charges following trials whose conformity with human rights standards has been called into question by the European Court of Human Rights, civil society and the international community”. In [Resolution 2185 \(2017\)](#) on ‘Azerbaijan’s Chairmanship of the Council of Europe: what follow-up on respect for human rights?’, the Assembly called on Azerbaijan to “release human rights defenders, journalists and civic and political activists who were imprisoned on politically motivated grounds”.

7. I would also recall the ‘Strässer report’ on the follow-up to the issue of political prisoners in Azerbaijan.<sup>4</sup> This formed the basis of a draft resolution that was rejected by the Assembly in January 2013. Since Mr Strässer’s report had been approved by our Committee, I have relied upon it as a source of information. The Report of the Independent Investigation Body on the allegations of corruption within the Parliamentary Assembly (IBAC) describes in detail the corruptive activities undertaken in pursuit of Azerbaijani interests around the time of the 2013 vote. Since then, the Court has issued a number of judgments concerning arbitrary detention in Azerbaijan, in some of them explicitly finding politically motivated misuse of the criminal justice system (see further below). Many of these concern cases that were addressed in Mr Strässer’s report and events that took place whilst it was under preparation, which clearly vindicates his conclusions.

## 2. Recent judgments of the European Court of Human Rights

8. The European Court has produced many judgments of direct relevance to the present report in recent years. These include six ground-breaking judgments finding violations of Article 18 of the Convention, in nine separate cases; an unprecedented finding that Azerbaijan had refused to fulfil its obligation to implement a Court judgment, following the Committee of Ministers’ recourse to ‘infringement proceedings’ under Article 46(4) of the Convention;<sup>5</sup> and numerous other judgments finding arbitrary criminal or administrative detention, often along with unfair trials and/ or violation of the freedom of association.

### 2.1. Article 18 judgments – misuse of restrictions on the right to liberty and security

9. Article 18, entitled “Limitations on use of restrictions on rights”, is one of the lesser-known provisions of the Convention but is nevertheless of fundamental importance. As the *travaux préparatoires* of the Convention make explicitly clear, its aim is to prevent totalitarianism. It states that “The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.” The Court’s Case-law Guide on Article 18 observes that “Article 18 is rarely invoked and there have been few cases where the Court declared a complaint under Article 18 admissible, let alone found a violation. In view of the scarcity of its case-law under Article 18, the Court exercises increased diligence when deciding cases where allegations of improper motives are made.” Indeed, the Court has only ever found violations of Article 18 in seventeen applicants’ cases (in fourteen judgments). Nine of these cases (in six judgments) concern Azerbaijan, and all six judgments are relevant to the present report.<sup>6</sup>

<sup>4</sup> Doc. 13079

<sup>5</sup> See further below.

<sup>6</sup> The other cases concern Russia (three), Ukraine (two) and Georgia, Moldova and Turkey (one each).

10. The first Article 18 judgment against Azerbaijan came in May 2014 in the case of *Ilgar Mammadov*.<sup>7</sup> Mr Mammadov was and still is a leading opposition politician who co-founded the Republican Alternative Civic Movement ('REAL') party. He was considering whether to run as a candidate in the November 2013 presidential elections. In January 2013, he visited the town of Ismayilli following an outbreak of rioting said to have been provoked by an incident involving V.A., the son of the Minister of Labour and the nephew of a local politician. In an article on his blog, Mr Mammadov blamed the rioting on "the general tension arising from corruption and insolence" of public officials. A few days later, the Ministry of Internal Affairs and the Prosecutor General's Office publicly stated that Mr Mammadov would be investigated for acts aimed at social and political destabilization of Ismayilli. The prosecutor then held two "face-to-face confrontations"<sup>8</sup> between Mr Mammadov and two local residents who claimed that he had urged local residents to throw stones at the police, which he denied. He was subsequently charged with organizing or actively participating in actions causing a breach of public order. A court remanded him in custody for two months, citing a risk that he would abscond or interfere with the investigation. Neither the charges nor the remand order mentioned the face-to-face confrontations. He remained in detention until he was convicted in March 2014 on more serious charges of mass disorder and resistance or violence against public officials, posing a threat to their life or health, and sentenced to seven years' imprisonment. The European Court of Human Rights found that, on the facts, there had been no 'reasonable suspicion' justifying his detention on remand, and the domestic courts had failed to verify the reasonableness of the suspicion when extending his detention, in violation of Articles 5(1) and (4) of the Convention respectively. The Court found that the statement by the interior ministry and prosecutor general could only have encouraged the public to believe that Mr Mammadov was guilty, in violation of the right to presumption of innocence under Article 6(2) of the Convention. Finally, the Court found that the Article 5(1) violation showed that the authorities had acted in bad faith and that his arrest and detention were in fact linked to his criticism of the authorities when reporting on the events in Ismayilli, in violation of Article 18.

11. In March 2016, the Court issued a second Article 18 judgment against Azerbaijan, in the case of *Rasul Jafarov*.<sup>9</sup> Mr Jafarov was and still is a well-known civil society activist and human rights defender, active also on the international level (including within the Council of Europe), and founder of the 'Human Rights Club' NGO. In July 2014, Mr Jafarov was called for questioning by the prosecutor general's office in connection with criminal proceedings related to alleged financial irregularities concerning a number of NGOs. The offices of the Human Rights Club were subsequently searched and a number of accounting documents seized. In August 2014, Mr Jafarov was arrested and charged with illegal entrepreneurship, large-scale tax evasion and abuse of power, and subsequently placed by court order in pre-trial detention for three months. He remained in detention until April 2015, when he was convicted on all charges, along with an additional charge of high-level embezzlement. Before and after his arrest, Mr Jafarov was described as a foreign spy and a traitor in pro-government media and by a number of politicians. In November 2014, his lawyer, Khalid Bagirov (well known as the legal representative of many applicants to the European Court of Human Rights), was disbarred and prevented from visiting Mr Jafarov in prison. The Court found that the facts relied on by the prosecution did not establish a reasonable suspicion of any of the offences with which Mr Jafarov was charged and that the courts had failed to conduct a proper review of his detention, in violation of Articles 5(1) and (4). It also found that Mr Jafarov's arrest and detention had occurred against the background of "an increasingly harsh and restrictive legislative regulation of NGO activity and funding", with several other notable human rights activists also having been arrested and similarly charged. This, taken together with the accusations of spying and treachery, "indicated that the actual purpose of the measures against Mr Jafarov had been to silence and to punish him for his activities in the area of human rights", in violation of Article 18. Finally, the Court found that Mr Bagirov's disbarment did not preclude him from representing clients before the European Court of Human Rights; by preventing him from meeting his client Mr Jafarov, the Azerbaijani authorities had thus also violated Article 34 of the Convention.<sup>10</sup>

12. The Court's third Article 18 judgment was delivered in April 2018 in the case of *Mammadli*.<sup>11</sup> Mr Mammadli, who had also collaborated with the Council of Europe, was the founder of several NGOs specialising in election monitoring which had regularly criticised the government and been either refused registration or dissolved by the authorities. In December 2013, after one of his unregistered NGOs published a report critical of the 2013 presidential election, Mr Mammadli was arrested and charged with illegal entrepreneurship, large scale tax evasion and abuse of power; he was later charged also with high-level

<sup>7</sup> App. No. 15172/13, 22 May 2014.

<sup>8</sup> See paras. 21-26 of the Court's judgment.

<sup>9</sup> App. No. 69981/14, 17 March 2016.

<sup>10</sup> "The High Contracting Parties undertake not to hinder in any way the effective exercise of [the] right [of individual application to the European Court of Human Rights]."

<sup>11</sup> App. No. 47145/14, 19 April 2018.



embezzlement and forgery in public office. He remained in detention until May 2014, when he was convicted on all charges and sentenced to five years' imprisonment. The Court found that there was no information or evidence to support a reasonable suspicion that Mr Mammadli had committed the offences for which he was initially detained, and that the domestic courts had failed adequately to review the lawfulness of his detention, in violation of Articles 5(1) and (4) respectively. Finding that Mr Mammadli's arrest and detention "were part of a larger campaign to crack down on human rights defenders in Azerbaijan", and noting that the initial charges came only days after publication of the critical report, at a time when politicians from the ruling political party were describing arrested NGO activists and human rights defenders as "spies" and "traitors", the Court found that "the actual purpose of the impugned measures was to silence and punish the applicant as a civil society activist for his activities in the area of electoral monitoring", in violation of Article 18.

13. In June 2018, the Court delivered another Article 18 judgment in the case of *Rashad Hasanov and others*.<sup>12</sup> Mr Hasanov and the three other applicants were members of the 'NIDA' youth organisation, which in early 2013 was holding peaceful protests against the deaths of soldiers in non-combat situations. Shortly before a protest planned for March 2013, three other NIDA members were arrested and charged with possessing drugs and Molotov cocktails; the four applicants were subsequently arrested and detained on identical charges of obtaining Molotov cocktails and supplying them to the three other detained NIDA members. The Court found inconsistencies, "large gaps" and a lack of evidence in the prosecution case against the applicants, and a failure by the domestic courts to scrutinise the prosecution's requests that they be held in custody. Since there had been no reasonable suspicion against the applicants, their detention was in violation of Article 5(1). The Court found that since there had been no reasonable suspicion against the applicants, the authorities had had an ulterior motive for detaining them. Noting the earlier arrests of other NIDA members and the authorities' references to NIDA's activities as 'illegal', without reason or evidence, and recalling reports by international human rights organisations of a "crackdown on civil society in Azerbaijan", the Court found that the arrest and detention of the applicants had been intended to silence and punish them for their active involvement in NIDA, in violation of Article 18.

14. The Court delivered its fifth Article 18 judgment against Azerbaijan in September 2018, in the case of *Aliyev*.<sup>13</sup> Intigam Aliyev is a well-known Azerbaijani human rights lawyer who has represented many applicants before the Court, and was chairman of the 'Legal Education Society'. In June 2014, he presented a report on the human rights situation in Azerbaijan at a side-event during the Assembly part-session in Strasbourg. In August 2014, as part of the same investigation of NGOs that led to human rights violations in the case of *Rasul Jafarov* (see above), Mr Aliyev was charged with illegal entrepreneurship, large-scale tax evasion and aggravated abuse of power; in December, he was also charged with high-level embezzlement, very large-scale tax evasion and forgery by an official (essentially, the same charges as were brought against Mr Mammadli – see above). During searches of his home and office, the authorities seized not only documents relating to his association, but also files relating to his cases before the European Court of Human Rights. In April 2015 he was convicted and sentenced to 7,5 years' imprisonment, which was reduced to a five-year suspended sentence in March 2016, when he was released from prison.<sup>14</sup> The Court found that there had been no "facts or information which would satisfy an objective observer that the person concerned may have committed the offence involved" and hence no grounds for reasonable suspicion of commission of any criminal offence. His detention thus violated Article 5(1). There was also a violation of Article 5(4), since "the [domestic] courts had automatically endorsed the prosecution case without any genuine, independent review of the lawfulness of his detention." Noting the "the increasingly harsh and restrictive legislative regulation of non-government organisations in Azerbaijan" and the fact that the measures taken against Mr Aliyev "also had a chilling effect on wider NGO activity", the Court found that "the restrictions on Mr Aliyev had actually been aimed at silencing and punishing him" and thereby violated Article 18.

15. The *Aliyev* judgment marked a significant further development in the Court's response to politically motivated abuse of the criminal justice system in Azerbaijan. Recalling its judgments in the cases of *Ilgar Mammadov*, *Rasul Jafarov*, *Mammadli* and *Rashad Hasanov and others* (see above), the Court noted "with concern that the events under examination in all five of these cases cannot be considered as isolated incidents. The reasons for the above violations found are similar and inter-connected. In fact, these judgments reflect 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... The Court accordingly finds that the actions of the State stemming from this pattern may give rise to further repetitive applications. Indeed, the Court cannot overlook in this regard the fact that a

<sup>12</sup> App. Nos. 48653/13, 52464/13, 65597/13 and 70019/13, 7 June 2018.

<sup>13</sup> App. No. 68762/14, 20 September 2018.

<sup>14</sup> Mr Aliyev's second application, relating to his trial, is currently pending before the Court.



number of applications raising issues similar to those outlined above have either been communicated to the Azerbaijani Government or are currently pending before the Court.” The Court then went on to dismiss the effectiveness of Azerbaijani domestic courts as a remedy and protection against politically motivated detention: “the domestic courts... systematically failed to protect the applicants against arbitrary arrest and continued pre-trial detention in the cases which resulted in the judgments adopted by the Court, limiting their role to one of mere automatic endorsement of the prosecution’s applications to detain the applicants without any genuine judicial oversight”. On this basis, the Court ruled that Azerbaijan must implement general measures focusing, “as a matter of priority, on the protection of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention. The measures to be taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non-repetition of similar practices in the future.”

16. The most recent Article 18 judgment was delivered in November 2019, in the case of *Natig Jafarov*.<sup>15</sup> Mr Jafarov was a co-founder of the REAL political movement. In 2016, REAL decided to campaign against the proposed constitutional reform that would, amongst other things, increase the powers and extend the term of office of the president and create a new unelected post of vice-president.<sup>16</sup> A referendum on the proposals was scheduled for September 2016; in August 2016, Mr Jafarov was arrested and charged with illegal entrepreneurship and aggravated abuse of power in relation to funds received from the US National Endowment for Democracy between 2011 and 2014. Shortly after his arrest, two other REAL activists were also arrested and sentenced to administrative detention. A few days later, REAL announced that it had decided no longer to participate in the referendum campaign because of political pressure, including the arrest of its members. In early September 2016, Mr Jafarov was released on the request of the prosecutor as the grounds justifying his detention no longer existed. The Court, noting the strong similarities between the charges brought against Natig Jafarov and those brought against Rasul Jafarov in 2014 (see above), again concluded that there had been no reasonable suspicion justifying his detention, in violation of Article 5(1). The Court further noted that “the restriction in question did not merely affect the applicant alone, or his fellow opposition activists and supporters, but the very essence of democracy as a means of organising society, in which individual freedom may only be limited in the general interest”. “[T]he actual ulterior purpose of the impugned measures was to punish the applicant for his active political engagement and to prevent him from participating as a representative of the opposition in the referendum campaign”, in violation of Article 18. The Court found that the present case constituted “part of [the] pattern... of arbitrary arrest and detention [...] in breach of Article 18” described in the *Aliyev* judgment (see above).

## 2.2. Other judgments concerning arbitrary detention under criminal law

17. The Court’s Article 18 judgments and its finding 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” must be borne in mind when considering the Court’s numerous other judgments finding arbitrary detention. Many of these concern administrative detention, which I will examine separately below. In relation to criminal detention, in the five years since the *Ilgar Mammadov* judgment, the Court’s judgments include the following:

- In *Yagublu*, the applicant, deputy chairman of the Musavat opposition party and a columnist for the Yeni Musavat newspaper, had accompanied Ilgar Mammadov to Ismayilli in January 2013 (see above) and was subsequently subject to similar criminal proceedings, resulting in a violation of Article 5(1). (Unlike Mr Mammadov, Mr Yagublu did not raise Article 18, despite the similarities in their cases.)<sup>17</sup>
- In *Ilgar Mammadov (No. 2)*, the Court examined Mr Mammadov’s trial and subsequent appeal proceedings. The Court found that his conviction was based on flawed or misrepresented evidence, that his objections to this evidence had been inadequately addressed and that evidence favourable to him had systematically been improperly dismissed, in violation of Article 6. (The Court did not consider it necessary to re-examine Mr Mammadov’s complaints under Article 18.)<sup>18</sup>
- In *Haziyevev*, the applicant was an active member of the opposition Popular Front Party, a journalist writing for the newspaper Azadliq and the presenter of a satellite television programme

<sup>15</sup> App. No. 64581/16, 7 November 2019.

<sup>16</sup> These reforms were strongly criticised by the European Commission on Democracy through Law (Venice Commission): see CDL-AD(2016)029, 18 October 2016. They were nevertheless approved and subsequently entered into force.

<sup>17</sup> App. No. 31709/13, judgment of 5 November 2015.

<sup>18</sup> App. No. 919/15, judgment of 16 November 2017.

critical of the government. In August 2014, he was arrested following an altercation with a stranger in the street, having himself approached the police for assistance. He was charged with hooliganism and remanded in custody, where he remained until January 2015, when he was convicted and sentenced to five years' imprisonment. The Court found that his initial detention was unjustified and arbitrary and that the domestic courts had failed to conduct an adequate review of its lawfulness, in violation of Articles 5(1) and (3). The Court did not consider it necessary to examine the Article 18 issue separately in this case.<sup>19</sup>

- In *Rustamzade*, the applicant was a student and civil society activist, who had participated in the creation in 2011 of the 'Free Youth' NGO. In early 2013, he participated in and, along with the NIDA civic movement, assisted in the organisation of a series of demonstrations against the deaths of Azerbaijan soldiers in non-combat situations (Mr Rustamzade had been questioned as a witness in Rashad Hasanov's case – see above). In May 2013, he was arrested, detained and charged with hooliganism on account of "manifest disrespect towards society". This charge related to a video that had been uploaded to the Internet of a group of his friends performing a popular dance in a public park, during which one of his friends made sexually suggestive movements near a statue. In May 2014, he was convicted of hooliganism, along with other charges that had been added in the meantime, including mass disorder and various arms-related offences, and sentenced to eight years' imprisonment. The Court found that there could have been no 'reasonable suspicion' justifying his detention, in violation of Article 5(1); it found his Article 18 complaint inadmissible on procedural grounds (non-exhaustion of domestic remedies).<sup>20</sup>

18. As noted above, for various reasons the Court did not examine Article 18 issues in substance in these judgments. The facts were sufficiently similar, however, that had the Court examined Article 18, it could well have come to the same conclusions as it did in the six judgments mentioned previously.

### 2.3. *Judgments concerning arbitrary detention under administrative law*

19. Whether 'administrative' or 'criminal', detention is still deprivation of liberty: if there is in reality no reasonable suspicion of commission of an offence, or no effective judicial review, then it violates Article 5 of the Convention. Administrative detention is particularly vulnerable to misuse, as the Court's judgments make clear;<sup>21</sup> and thirty, sixty or ninety days' administrative detention would be more than enough to prevent participation in a demonstration and would be enough to discourage many people from future political activity – as the Court has observed.<sup>22</sup>

20. The Court's judgments show that administrative detention has also been widely misused by the Azerbaijani authorities.<sup>23</sup> The *Gafgaz Mammadov* group of cases, including 21 judgments in 70 (seventy) individual cases concerning administrative detention, is currently under enhanced supervision by the Committee of Ministers. The Committee of Ministers' summary states that these cases all involve "breaches of the applicants' freedom of assembly through the dispersal of unauthorised peaceful demonstrations not posing any threat to public order, organised/ planned by the opposition in 2010-2014 and their ensuing arrest and administrative conviction to short periods (3-15 days) of detention for having participated in the demonstrations... The Court considered that in taking [these] measures [...] the authorities involved failed to act with due tolerance and good faith as regards the applicants' right to freedom of assembly, did not adduce sufficient and relevant reasons justifying the interferences, and imposed disproportionate sanctions. It found that these measures must not only have discouraged the applicants but must also, in all probability, have

<sup>19</sup> App. No. 19842/15, judgment of 6 December 2018. The applicant has another case pending before the Court relating to his trial and conviction, in which he alleges violations of Articles 6 and 10: App. No. 65893/16, communicated on 6 September 2019.

<sup>20</sup> App. No. 38239/16, judgment of 7 March 2019.

<sup>21</sup> See also a report by Human Rights Watch, which stated that administrative proceedings leading to administrative detention "were perfunctory, rarely lasting longer than 15 minutes, and the judicial decisions on which the detentions are based relied almost exclusively on police testimonies. In all cases documented by Human Rights Watch, the activists could not retain a lawyer of their choosing or mount an effective defense": "Harassed, Imprisoned, Exiled: Azerbaijan's Continuing Crackdown on Government Critics, Lawyers, and Civil Society", October 2016.

<sup>22</sup> The maximum duration of administrative detention was increased to 90 days in 2013. The Committee for the Prevention of Torture (CPT) observed that "the extension of administrative arrest to 90 days goes against the trend (observed by the Committee in several countries) of either shortening the maximum term of administrative arrest or abolishing that type of sanction altogether": "Report on the visit to Azerbaijan from 23-30 October 2017", CPT/Inf (2018) 37, 18 July 2018.

<sup>23</sup> See also the this committee's 2016 report on administrative detention (rapporteur: Lord Balfe, United Kingdom, EC/DA), doc. 14079.

deterred other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate (violations of Article 11). The Court also found that the criminal proceedings leading to the applicants' administrative convictions were unfair (violations of Article 6). Finally, the Court found that the applicants' arrests and administrative detentions were arbitrary, as unrelated to the formal ground relied on to justify the deprivation of liberty and motivated solely by their participation / intention to participate in peaceful demonstrations. The domestic courts also acted arbitrarily in reviewing the legality of the deprivation of liberty, failing to examine whether the police had invoked the correct legal basis for the applicants' arrests or the legality of the police interferences with the demonstrations".

21. There is credible evidence that misuse of administrative detention has remained widespread since 2014. In May 2019, the Election Monitoring and Democracy Studies Centre (EMDS) NGO published a report entitled "Politically Motivated Administrative Detentions in Azerbaijan". Gathering evidence from detainees and their lawyers, as well as verified media reports, the EMDS concluded that there had been at least 131 politically motivated administrative detentions between January 2018 and February 2019, with the total number likely to be much higher. It found that the use of administrative detention to prevent or punish people for participating in demonstrations had increased since 2016 and was used in relation to both unauthorised and authorised demonstrations. For example, EMDS reported that prior to and following authorised rallies organised by the opposition National Council of Democratic Forces in September-October 2017, the police summoned 229 people across Azerbaijan, of whom 18 were sentenced to between 10 and 30 days administrative detention for resisting the police. During three further authorised rallies, organised during the April 2018 presidential election, 174 people were summoned by the police, with 17 sentenced to administrative detention. A rally organised by REAL in May 2018 resulted in 10 of its members being summoned and 4 of them being sentenced to administrative detention. In January 2019, demonstrations in support of Mehman Huseynov (see below) resulted in 40 people being sentenced to administrative detention. During the same month, when 30 people gathered in front of a criminal court during trials relating to an opposition party's financing, 7 of them ended up in administrative detention. Another NGO, the Institute for Democratic Initiatives (IDI), has also reported in detail on numerous cases of administrative detention connected to public assemblies organised by opposition political groups: 30 in 2016, at least 20 in 2017, 17 in 2018, and at least 21 in the first five months of 2019.<sup>24</sup>

#### 2.4. Pending cases concerning arbitrary detention

22. As the Court itself pointed out in the *Aliyev* judgment (see above), there are a large number of arbitrary detention-related cases pending before the Court that have been communicated to the Azerbaijani government.<sup>25</sup> Many of these invoke Article 18, including *Yunusova and Yunusov* (human rights defenders and civil society activists convicted of various offences including large-scale fraud and high treason: alleged violations also of Articles 3 – prohibition of torture – 5, 6, 8 – right to respect for private and family life, home or correspondence – 13 – right to an effective remedy – and others);<sup>26</sup> *Ibrahimov and 2 others* (members of NIDA convicted of large scale drug offences: alleged violations also of Articles 3, 5, 6, 8 and 10 – freedom of expression);<sup>27</sup> *Mukhtarli v. Azerbaijan and Georgia* (critical journalist's abduction from Georgia and arrest and eventual conviction on currency smuggling charges in Azerbaijan: alleged violations also of Articles 5 and 6);<sup>28</sup> *Nuruzade and 5 others* (administrative detention and conviction: alleged violations also of Articles 5, 6, 8 – right to family life – 10 and, in respect of two of the applicants, 18);<sup>29</sup> *Khadija Ismayilova* (journalist and civil society activist arrested and detained on charges of inciting a colleague to commit suicide: alleged violations also of 5, 6 and 10);<sup>30</sup> *Ilgar Mammadov and 4 others* (administrative detention and conviction of members of the opposition Popular Front Party of Azerbaijan: alleged violations also of Articles 5, 6 and

<sup>24</sup> "Situation of the freedom of assembly in Azerbaijan: Policy Paper", 2019. The figures given above are conservative as it is not always clear from this report whether individuals were subject to administrative arrest or court-ordered administrative detention.

<sup>25</sup> Communication of a case to the respondent State implies that the Court does not consider the application to be manifestly inadmissible and that there are specific, substantive issues that the respondent State must address. Communications are available on the Court's HUDOC online search engine; the full applications can be consulted on the Court's premises.

<sup>26</sup> App. No. 68817/14, communicated on 5 January 2015.

<sup>27</sup> App. No. 63571/16, communicated on 9 April 2018.

<sup>28</sup> App. No. 39503/17, communicated on 30 May 2018. I met Mr Mukhtarli in prison during my fact-finding visit to Azerbaijan.

<sup>29</sup> App. No. 30739/17 et al, communicated on 5 July 2018.

<sup>30</sup> App. No. 30778/15, communicated on 26 August 2015. Ms Ismayilova participated in the Committee hearing by video-conference; I also met her during my visit to Azerbaijan.

10);<sup>31</sup> and *Rustamzade* (criminal convictions for public order offences: alleged violations also of Articles 6 and 10).<sup>32</sup>

23. Other pending applications give every appearance of politically motivated deprivation of liberty, even if they do not explicitly mention Article 18 – which does not prevent the Court from raising the issue later, of its own motion. These cases include *Agakishiyev* (administrative arrest, conviction and detention for failure to comply with police orders: alleged violations of Articles 5 and 6);<sup>33</sup> *Hasanov* (administrative conviction and detention for obstructing a highway: alleged violation of Article 6);<sup>34</sup> *Gasimov and 4 others* (alleged violations of Article 5 and, in the case of one applicant, a journalist for *Azadliq*, of Article 10);<sup>35</sup> *Ibrahimov* (administrative conviction and detention for failure to comply with police orders: alleged violation of Article 6);<sup>36</sup> *Mammadov* (journalist and civil society activist convicted of drug dealing, high treason and incitement to hatred: alleged violations of Articles 6 and 10);<sup>37</sup> *Ramazanov* (conviction of possession of drugs: alleged violation of Article 6);<sup>38</sup> *Savalanli* (conviction of possession of drugs: alleged violation of Article 6);<sup>39</sup> and *Gahramanli* (arrest and detention of the deputy chairman of the opposition Popular Front Party for inciting the violent overthrow of the government: alleged violations of Articles 5, 6 and 10)<sup>40</sup>. Other potentially relevant applications include *Rafiyev* (administrative arrest, conviction and detention for failure to comply with police orders: alleged violations of Articles 5, 6 and 9)<sup>41</sup> and *Agayev and 6 others* (arrest, detention and conviction of offences relating to their Nursist Islamic religious activities: alleged violations of Article 5, 6 and 9).<sup>42</sup>

### 3. The Court's judgments and the Assembly's definition of 'political prisoner'

24. The Court's judgments do not explicitly state that any applicant was a political prisoner. This is entirely unsurprising, since the Convention does not include the concept of 'political prisoner' as such and the Assembly's definition has no legal status for the Court. For the same reasons, however, the Court did not find that anyone was not a political prisoner. The real question is whether or not the Court's findings of fact satisfy the Assembly's definition.

25. In Resolution 1900 (2012), the Assembly adopted the following definition of 'political prisoner':

"A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':

1. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;
2. if the detention has been imposed for purely political reasons without connection to any offence;
3. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;
4. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,
5. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."

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<sup>31</sup> App. No. 27390/17 et al, communicated on 28 August 2018. N.b. this is not the same Ilgar Mammadov whose Article 18 judgment led to Article 46(4) proceedings (see above).

<sup>32</sup> App. No. 22323/16, communicated on 6 February 2019. This application relates to the same series of events as the Court's earlier judgment: see above.

<sup>33</sup> App. No. 64427/17, communicated on 6 September 2017.

<sup>34</sup> App. No. 39472/16, communicated on 3 September 2018.

<sup>35</sup> App. No. 37457/09, communicated on 3 September 2018.

<sup>36</sup> App. No. 39466/16, communicated on 6 September 2018.

<sup>37</sup> App. No. 959/15, communicated on 11 September 2018.

<sup>38</sup> App. No. 53596/15, communicated on 3 April 2019.

<sup>39</sup> App. No. 70919/12, communicated on 20 September 2019.

<sup>40</sup> App. No. 74009/16, communicated on 23 September 2019.

<sup>41</sup> App. No. 81028/17, communicated on 6 September 2018.

<sup>42</sup> App. No. 9327/16 et al, communicated on 3 April 2019.

26. The definition set out in Resolution 1900 was taken from that used by the Secretary General's independent experts in 2001 when examining the situation in both Azerbaijan and Armenia. The experts' definition was accepted at the time by the Committee of Ministers, which included Azerbaijan and Armenia. Resolution 1900 makes clear that its definition is intended for universal application; indeed, the report on which Resolution 1900 was based was deliberately prepared separately from a report on political prisoners in Azerbaijan so as to ensure that the definition would not be seen as applicable only in that context.

27. It is explicit in the Court's Article 18 judgments and apparent in many of the other judgments mentioned above that one or more of the grounds set out in Resolution 1900 is satisfied. For example:<sup>43</sup>

- In the first *Ilgar Mammadov* judgment, the Court found that there had been no reasonable suspicion justifying his detention on remand, and that the domestic courts had failed to verify whether there was a reasonable suspicion. Furthermore, his arrest and detention were in fact linked to his criticism of the authorities, implying a violation of his right to freedom of expression. These findings clearly satisfy the first, second and/ or fifth grounds. Mr Mammadov must be considered to have been a political prisoner.
- In the *Yagublu* judgment, the facts and the Court's legal reasoning were effectively the same as those in the first *Ilgar Mammadov* judgment. For the same reasons, Mr Yagublu must also be considered to have been a political prisoner.
- In the *Rasul Jafarov, Mammadli, Rashad Hasanov and others, Aliyev and Natig Jafarov* judgments, the Court found that there had been no reasonable suspicion justifying detention, and/ or that the domestic courts had failed to conduct a proper review of detention. Furthermore, the actual purpose of the measures taken against the applicants had been to silence and punish them for their human rights, civil society or NGO activities, as the case may be, implying violations of their rights to freedom of expression, assembly and/ or association. Again, in each of these cases, the findings clearly satisfy one or more of the same three grounds mentioned above. All of these applicants must be considered to have been political prisoners.
- In the *Aliyev* judgment, the Court made a general finding of a "troubling pattern of arbitrary arrest and detention of government critics [etc.] through retaliatory prosecutions and misuse of criminal law", with the domestic courts "systematically failing to protect" against arbitrary deprivation of liberty, "without any genuine judicial oversight". This clearly implies recognition by the Court of the existence of a far greater number of persons whose circumstances would satisfy the Assembly's definition of 'political prisoner'.
- In the *Gafgaz Mammadov* group of cases, the Court found that the 70 (seventy) applicants' detentions had been arbitrary and/ or their trials had been unfair, violating their freedom of assembly at opposition demonstrations. Yet again, in each of these cases, the findings clearly satisfy one or more of the three grounds mentioned above: the administrative detention violated the right to freedom of assembly, and/ or it was imposed for purely political purposes without connection to any offence, and/ or it resulted from clearly unfair proceedings apparently connected to political motives of the authorities. These applicants must also be considered to have been political prisoners.
- The Committee of Ministers, in its supervision of the *Gafgaz Mammadov* group of cases, has referred to "the structural problems revealed by the present group of cases" (see further below). Again, this implies the existence of an underlying situation likely to generate further cases. The reports of the EMDS and IDI mentioned above suggest that this has in fact happened. These cases could also satisfy the Assembly's definition of 'political prisoner'.

28. As to the cases involving administrative detention, the Committee of Ministers' summary of the Court's judgments shows that the individuals concerned had been detained in violation of their freedom of assembly; their detention was arbitrary and motivated solely by their political activities; it was disproportionate to any alleged offence; and it resulted from clearly unfair proceedings. In accordance with the definition set out in Assembly Resolution 1900 (2012), anyone detained in such circumstances should be considered a political prisoner. On the basis of the Court's numerous judgments, the Committee of Ministers' identification of a 'structural problem' (see further below) and the credible reporting of reputable NGOs on more recent incidents, I further conclude that there is also a 'pattern' of deliberate, systematic misuse of administrative

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<sup>43</sup> The following list is illustrative; it is not intended to be exhaustive and is without prejudice to the Rapporteur's position on any other case.

detention, with the aim of preventing, punishing and deterring legitimate exercise of the freedoms of expression and assembly.

29. It is simply no longer possible to argue that Azerbaijan does not have a problem of political prisoners. The Court's judgments establish facts showing not only that a series of specific individuals were indeed political prisoners, but also that the authorities systematically misuse the criminal justice apparatus to persecute opposition politicians, civil society activists, journalists, human rights defenders and other perceived dissidents in reprisal for their activities. These judicially established facts cannot be denied without rejecting the authority of the Court and its judgments, along with the validity of the Assembly's own well-established definition.

#### 4. Implementation of the Court's judgments and its supervision by the Committee of Ministers<sup>44</sup>

##### 4.1. *The Ilgar Mammadov group of cases (Article 18 judgments)*

30. The Committee of Ministers is examining the above-mentioned Article 18 judgments (with the exception of the recent *Natig Jafarov* judgment, which is not yet final<sup>45</sup>) as the *Ilgar Mammadov* group, under its 'enhanced supervision' process. Within that group, the Committee of Ministers considers three issues: individual measures, payment of just satisfaction (financial compensation for damages) and general measures. The individual measures require *restitutio in integrum*, i.e. a complete restoration of the situation prior to the violation. Whilst all the applicants have by now been released from prison, their criminal convictions remain on record, with negative consequences for their professional activities: Mr Mammadov is barred from standing for election to political office until August 2024, which would prevent him from running in the parliamentary elections due in 2020 (he was in prison during the 2015 and 2016 parliamentary elections and the 2018 presidential elections); Mr Mammadli is also a politician who has been and will be unable to stand for election; and Rasul Jafarov is unable to practice as a lawyer.

31. In December 2017, over three years after the Court's judgment had become final, the Committee of Ministers for the first time ever invoked Article 46(4) of the Convention to refer the case of *Ilgar Mammadov v. Azerbaijan* (see above) to the Court for a ruling on whether Azerbaijan had failed to fulfil its obligation to implement the judgment, since Mr Mammadov had still not been released from detention.<sup>46</sup> In its Article 46(4) judgment, delivered on 29 May 2019, the Court found that Azerbaijan had not "acted in 'good faith'" and had failed to fulfil its obligation to implement the first *Mammadov* judgment. It then referred the case back to the Committee of Ministers under Article 46(5), for consideration of the measures to be taken. In the meantime, between the Committee of Ministers' reference under Article 46(4) and the Court's judgment, Mr Mammadov had been released on probation in August 2018, and the Azerbaijani Supreme Court had reduced his sentence, found that he had served his time in full and set aside the conditions on his release in March 2019.

32. At the Committee of Ministers' last 'DH' meeting on 23-24 September 2019,<sup>47</sup> the Committee of Ministers "underlined 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". It noted that the Azerbaijani government had only transmitted the relevant judgments to the Supreme Court for re-consideration, as a first step towards eliminating the negative consequences of the convictions, on 12 September 2019 – despite those judgments having been final for, in some cases, several years. It also took note of information from the Azerbaijani government that Mr Aliyev's offices had only recently been unsealed and that the court orders to freeze his and his NGO's bank accounts had become invalid at the end of the prosecution – although Mr

<sup>44</sup> This section will deal only with the Article 18 judgments and those concerning administrative detention, since the Committee of Ministers examines these cases in two groups under its enhanced procedure. Other detention-related cases are dealt with individually under the 'ordinary' procedure.

<sup>45</sup> I.e. it is still open to the parties to request referral of the case to the Court's Grand Chamber, under Article 43(1).

<sup>46</sup> "If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1." (Paragraph 1 of Article 46 states that "The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.")

<sup>47</sup> 'CM/DH' meetings are those at which the Committee of Ministers supervises the execution of the Court's judgments.

Aliyev complained that the prosecutor had not informed the banks, which continued to refuse access to the accounts.

33. The Committee of Ministers also recalled that the Court's judgments required Azerbaijan to adopt "effective and comprehensive [general] measures to further enhance the independence of the judiciary and the Prosecutor's Office and specifically 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". In this connection, it noted "with interest" information from the authorities on reforms launched by the Executive Order of February 2017 'on improvement of operation or penitentiary, humanization of penal policies and extension of application of alternative sanctions and non-custodial procedural measures of restraint' and the Presidential Decree of April 2019 'on deepening of reforms in the judicial-legal system'.<sup>48</sup>

34. The 2017 Executive Order and the 2019 Presidential Decree have potential to improve the Azerbaijani criminal justice and judicial systems in general.<sup>49</sup> To that extent, they must be welcomed. The authorities in Azerbaijan told me, for example, that the 2017 Order had resulted in over 14,000 people benefiting from decriminalisation of certain offences, with 24% fewer people now in custody, and that the number of arrests was now 30% lower than in 2016. As to the 2019 Decree, it would enhance judges' financial independence, by increasing their salaries, and had made recommendations to the Judicial Legal Council to take measures against exercise of undue influence on judges. Judges were now accepting far fewer prosecution requests for pre-trial detention orders. It is less clear, however, how these instruments will fulfil the Court's requirement of general measures to prevent future political motivated misuse of the criminal justice system.

35. The 2017 Order includes a 'recommendation' to the courts "that they examine the existence of reasonable suspicion of individuals having committed an offence and grounds for arrest, when deciding on measure of restraint, and arguments in favour of alternative measures". The requirement of suspicion of commission of an offence as a prerequisite for pre-trial detention has long been part of the Azerbaijani Code of Criminal Procedure, consistent with Azerbaijan's obligations under the Convention. Nevertheless, the Court's judgments concerning political prisoners show that people were often detained despite there being no reasonable suspicion – often in the absence of any credible evidence – with the domestic courts failing to conduct an adequate review of detention. The Azerbaijani courts should apply the law as a matter of course, in accordance with the Constitution; it should not depend on instructions from the President. The essential question is whether judges will have the professionalism and confidence to resist pressure from prosecutors to detain individuals in 'political' cases.

36. The effect of implementation of the 2019 Decree will be crucial in this respect. This Decree is aimed at "improving the mechanisms for protecting judges from possible inappropriate interference with their activities". When it comes to resisting possible interference from the executive itself, however, two essential problems remain unresolved: the influence of the Ministry of Justice over the Judicial Legal Council (JLC), which is responsible for judicial appointments, transfers, evaluation and discipline; and appointment of the chairs of the Supreme Court and the Supreme Court of the Nakhchivan Autonomous Republic by the president. In Resolution 2184 (2017) on the functioning of democratic institutions in Azerbaijan, the Assembly expressed concern over both of these issues. In March 2019, the Council of Europe's Group of States Against Corruption (GRECO), which had previously recommended that "not less than half of [the JLC's] members to be composed of judges who are directly elected or appointed by their peers", noted that "Although nine out of fifteen members of the JLC are judges [...], only a minority of them are appointed or elected by their peers. Furthermore, the JLC was still chaired by the Minister of Justice and not elected from among the JLC members who are judges, as it was recommended." GRECO also called for "determined measures to ensure that the Judicial Legal Council is involved in the appointment of all categories of judges and court presidents".<sup>50</sup> I am aware that Azerbaijan and the Council of Europe are currently co-operating on a project to give 'support to justice sector reform initiatives in Azerbaijan' but note that this project will not address these two structural problems.

37. One other crucial problem may, however, have been resolved: presidential influence over the Prosecutor General's office. In November 2017, the Law on the Prosecutor's Office was amended: instead of

<sup>48</sup> The Committee of Ministers will resume its examination of the *Ilgar Mammadov* group at its December 2019 'DH' meeting.

<sup>49</sup> Indeed, the Azerbaijani authorities have provided statistics showing that the number of individuals held in pre-trial detention has decreased, the number released from pre-trial detention has increased, the number of requests by prosecutors for suspects to be held in pre-trial detention has decreased and the number of such requests rejected by judges has increased, in all cases significantly.

<sup>50</sup> "Fourth Evaluation Round/ Second Compliance Report – Azerbaijan", GRECO, GrecoRC(2019)3, 22 March 2019.



having ‘oversight’ of the prosecutor’s activities, the president now merely receives general information about them. Both Mr Schennach, co-rapporteur of the Monitoring Committee, and GRECO have welcomed this development – as do I.

#### 4.2. *The Gafgaz Mammadov group of cases (administrative detention)*

38. The Committee of Ministers first examined this group of cases in June 2017, when it noted that “nine similar judgments were classified at this meeting as clones of the *Gafgaz Mammadov* group” and “noted with concern that no information has been provided to the Committee [by Azerbaijan] in this group of cases”. In December 2017, it noted “the constant influx of new cases in this group, expressed their deep concern regarding the continued absence of information” and “invited firmly the authorities to provide, without further delay, a comprehensive action plan or action report”. Most recently, in June 2018, the Committee of Ministers “expressed anew their deep concern regarding the continued absence of information on legislative and other action taken to address the structural problems revealed by the present group of cases”. Azerbaijan has still not provided any information to the Committee of Ministers on how it intends to implement the Court’s judgments in such a way as to resolve the structural problem underlying abuse of administrative detention – two-and-a-half years after first being formally requested to do so.

39. It is clear that politically motivated misuse of administrative detention is still a recurrent practice. It is therefore imperative that Azerbaijan implements the *Gafgaz Mammadov* group of judgments as a matter of urgency, in full co-operation with the Committee of Ministers. This must include the immediate submission of a detailed and comprehensive action plan setting out the measures to be taken.

#### 4.3. *The attitude of the Azerbaijani authorities towards implementation of the Court’s judgments*

40. All of the institutional representatives whom I met insisted that they respected the authority of the Court and its judgments and that the judgments would be fully implemented. I had some concern, however, about their attitude when asked about key findings in the Court’s Article 18 judgments. It would be unhelpful to enter into precise details of what they said, so I will simply state my understanding of their position. The representatives of the Supreme Court and the Prosecutor General’s office both denied that anyone was arrested or detained for their political views; people were only subjected to criminal law measures in connection with actual offences. The representatives of the Supreme Court and the Presidential Administration both insisted that there was no ‘troubling pattern’ of politically motivated misuse of the criminal justice system and that the small number of Article 18 judgments was insufficient to establish such a pattern.

41. When I mentioned these statements to Mr Seyidov, however, he repeatedly assured me that I must have misunderstood them. I hope that Mr Seyidov is correct, since it would be difficult to have confidence in the prospects for resolution of the problem of political prisoners if the relevant authorities denied that it even exists. On the contrary, the authorities’ explicit recognition of the problem would contribute greatly to the prospects of success of reforms intended to resolve it. The Assembly must encourage such recognition and follow closely the reforms and their impact on the incidence of politically motivated detention. It is beyond the scope of the present report to conduct a detailed review of all of the measures that have and will be taken under the 2017 Order and the 2019 Decree. I trust, therefore, that the co-rapporteurs of the Monitoring Committee will undertake this task and that Mr Efstathiou, our own committee’s rapporteur on the implementation of judgments of the Court, will follow the work of the Committee of Ministers on this issue.

### 5. **Ill-treatment of detainees and conditions of detention**

42. Detention in Azerbaijan is particularly effective as a means of preventing and punishing criticism and dissent because of the conditions that detainees will face.

43. Concerning ill-treatment in police custody, the Council of Europe’s Committee for the Prevention of Torture (CPT) in 2017 noted “numerous and very widespread allegations of severe physical ill-treatment of persons detained by the police as criminal suspects (or who had recently been in police custody), including juveniles as young as 15. The alleged police ill-treatment appeared to follow a very consistent pattern throughout the different regions visited: it was said to have occurred mostly in police establishments during initial interviews by operational police officers (in some cases, also by investigators and senior officers in charge of police establishments), with the aim to force the persons to sign a confession, provide other information or accept additional charges. The types of ill-treatment alleged included slaps, punches, kicks, truncheon blows, blows inflicted with a wooden stick, a chair leg, a baseball bat, a plastic bottle filled with water or with a thick book, but there were also many allegations of more severe forms of ill-treatment,

including torture, such as truncheon blows on the soles of the feet (often while the person was suspended) and infliction of electric shocks (including with the use of electric discharge weapons).<sup>51</sup>

44. Concerning ill-treatment in pre-trial detention, in 2016 the CPT reported being “literally inundated with allegations of systematic and severe physical ill-treatment of inmates by staff (severe beatings whilst prisoners were handcuffed to bars in a crucifixion position in the prison’s underground tunnel, sometimes combined with pouring cold water over the prisoners and placing a cold fan in front of them). [...] [T]here could be little doubt that severe ill-treatment/torture was in fact occurring.” (Further allegations of physical ill-treatment were made to the CPT during its 2017 visit to the same facility.)

45. Concerning ill-treatment in prisons, the CPT heard a number of credible allegations in 2016, including truncheon blows of female prisoners whilst handcuffed behind their backs by the facility’s (male) director – who did not deny the allegations. It further noted a problem of inter-prisoner violence, sometimes resulting in severe injuries, in several detention facilities.<sup>52</sup> Some of the prisoners whom I met during my visit also told me how they had been subject to or witnessed similar serious physical ill-treatment by prison staff – including of a detainee being severely beaten by prison guards whilst restrained by handcuffs.

46. As to detention conditions, following its 2017 visit, the CPT noted “extremely poor” conditions in two of the three pre-trial detention centres that it visited, with cells that were “dilapidated, dirty, poorly lit and ventilated (in addition to being severely overcrowded).”<sup>53</sup> In 2016, it had noted that “all of the prisons visited were overcrowded to varying degrees”, which was “aggravated even more by the advanced state of dilapidation and insalubrity” in two of them. It also reported on the quality of food served to prisoners, which included potatoes that were “rotten with multiple black holes and appeared to be unfit for human consumption.”<sup>54</sup> I saw with my own eyes the extremely cramped, dirty and dilapidated state of the cells in Gobustan prison. I was also told by prisoners whom I met during my visit that the food they were served was inedible and that whenever possible, prisoners refused to eat it, relying instead on what their families could provide. In one prison, occupying a former warehouse, I was told that temperatures in summer became so unbearable that the inmates themselves had paid for air conditioning to be installed.

47. Conditions for people held in administrative detention are also inadequate. These people are held in ‘temporary detention centres’ (TDCs), which the CPT has found to be “not adapted for such prolonged stays [of up to 90 days], *inter alia* because of the total lack of activities... [P]ersons detained in TDCs have no right to receive visits and make telephone calls, which is an issue of concern in case of detention period exceeding a few days.”<sup>55</sup> This concern is largely due to the fact that detainees’ contact with the outside world is one of their best protections against ill-treatment.

48. The CPT has repeatedly stated of Azerbaijan that “legal safeguards against ill-treatment, especially notification of custody, access to a lawyer, access to a doctor and information on rights, [...] remain largely a dead letter and are mostly inoperative in practice.” I also note the consistent reports, including from individuals whom I met during my visit to Azerbaijan, of ‘punishment beatings’ and of prisoners being placed in ‘punishment cells’ (i.e. solitary confinement, in particularly brutal conditions) in retaliation for attempts to complain to the outside world about conditions or treatment in detention.

49. Several people widely considered to have been political prisoners, some of them by myself in this report, were found by the Court to have been subjected to inhuman or degrading treatment or punishment. For example, Emin Huseynov was ill-treated during his arrest and police detention, such as to cause him “serious physical pain and suffering.”<sup>56</sup> Both Mrs Yunusova and Mr Yunusov were found to have been subjected to inhuman and degrading treatment due to the authorities’ failure to provide them with necessary medical care.<sup>57</sup> And Mr Aliyev was subject to degrading treatment due to the conditions of his pre-trial detention.<sup>58</sup>

50. In other words, not only does arbitrary detention in Azerbaijan imply an unjustified loss of liberty, with everything that ordinarily follows from this; it also involves a risk of appalling detention conditions, at best, and serious physical ill-treatment or even torture, at worst. In a democracy, exercise of the fundamental

<sup>51</sup> CPT/Inf (2018) 37.

<sup>52</sup> “Report on the visit to Azerbaijan from 29 March to 8 April 2016”, CPT/Inf (2018) 35, 18 July 2018.

<sup>53</sup> CPT/Inf (2018) 37.

<sup>54</sup> CPT/Inf (2018) 35.

<sup>55</sup> CPT/Inf (2018) 37.

<sup>56</sup> App. No. 59135/09, judgment of 7 May 2015. Emin is the brother of Mehman Huseynov.

<sup>57</sup> App. No. 69520/14, judgment of 2 June 2016.

<sup>58</sup> App. No. 68762/14, judgment of 20 September 2018.

freedoms of expression, assembly and association should not depend on whether one is brave enough to confront such risks.

## **6. 'Lists' of political prisoners and recent cases not yet examined by the Court**

51. For many years, various international and national NGOs have maintained different lists of persons whom they consider to be political prisoners in Azerbaijan. These bodies have acted independently of one another: their lists have been compiled at different times, by different people, using different sources of information and criteria. It is unsurprising that the lists have not been identical, even if many names appear on several lists.

52. Mr Strässer's report of December 2012 also included a 'consolidated list of alleged political prisoners' containing 85 names. At least nine of these people have won their cases before the Court, and another four cases have been communicated to the Azerbaijan government but not yet decided by the Court.<sup>59</sup> In the circumstances, this is a remarkably high number: many of the people on the list may not have applied to the Court, perhaps due to a desire to maintain a low profile, ignorance of the possibility or the severe shortage of independent lawyers, especially outside Baku, who are competent and willing to conduct proceedings before the Court; and some or even many applications may have failed the Court's stringent admissibility test. This underlines the rigour of Mr Strässer's approach and the reliability of his report.

53. In 2017, the Assembly included the names of a number of reported political prisoners in Resolution 2184. These included Mehman Aliyev and Faiq Amirli, 14 persons convicted in the so-called Nardaran case (see further below) who had been released, and Ilgar Mammadov, Ilkin Rustamzade, Mehman Huseynov, Afgan Mukhtarli, Said Dadashbayli, Fuad Gahramanli and Aziz Orujov.

54. In this report, I do not present my own list of presumed political prisoners. I have chosen this approach because I have one great advantage over my predecessors as rapporteur: I can rely on the authoritative, binding judgments of the European Court of Human Rights to establish the facts of the situation – which, as I have already observed, can leave no doubt that the phenomenon of political prisoners in Azerbaijan is real. I wanted to show that the case can be made – can be proved – on the basis of the authoritative findings of Council of Europe bodies, notably the Court. This does not undermine the work of civil society bodies: on the contrary, it confirms their credibility.

55. I find the most detailed and extensive lists of political prisoners – in particular those drawn up by the 'Working Group on a Unified List of Political Prisoners in Azerbaijan'<sup>60</sup> and the 'Union for the Freedom of Political Prisoners in Azerbaijan'<sup>61</sup> – to be credible and reliable. In this respect, I note that all of the applicants in whose cases the Court found violations of Article 18 had appeared on these lists.<sup>62</sup> The Assembly should therefore renew its call on the Azerbaijani authorities to review the cases that currently appear on these lists and to release everyone who was imprisoned on politically motivated grounds, as it did in Resolutions 2184 and 2185 (2017).

56. I would also like to comment on a few selected cases: those of the detainees whom I met; that of Mehman Huseynov, the well-known anti-corruption blogger and activist, who has been released from prison and whom I also met during my visit; and one recent group of cases of particular concern. These cases were selected without prejudice to my position on any other reported cases of political prisoners.

57. Taleh Bagirzade is the chairman and Abbas Huseynov a member of the Muslim Unity Movement (MUM). Mr Bagirzade received religious education in Iran but has consistently maintained, including to me, that he is an advocate of pluralistic democracy as a means of protecting religious freedom. He has been

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<sup>59</sup> There were judgments in the cases of Tural Abbasli (App. No. 5417/13, judgment of 16 February 2017), Zulfugar Eyvazli (6903/13, 26/09/19), Arif Hajili (67932/11, 26/09/19), Rufet Hajibeyli (25680/14, 26/09/19), Babek Hasanov (6814/13, 26/09/19), Ali Insanov (16133/08, 14/03/13), Rahib Mahsimov (38228/05, 08/10/09), Mahammad Majidli (56317/11, 26/09/19), and Ahad Mammadli (69456/11, 16/06/16). The communicated cases are Said Dadashbeyli (11297/09, communicated on 07/11/17), Elnur Majidli (7218/13, 21/09/15), Elnur Seyidov (38203/12, 29/04/19) and Avaz Zeynali (37816/12, 29/05/18).

<sup>60</sup> The coordinators of this group are Intigam Aliyev and Khadija Ismayilova, whom I met during my visit to Azerbaijan. The latest version of this list was published in September 2019 and contains 119 names.

<sup>61</sup> The authors of this list are Leyla Yunus, who participated in our committee hearing, and Elshan Hasanov. The latest version of this list was published in November 2019 and contains 135 names.

<sup>62</sup> Intigam Aliyev has sent me detailed information on 38 individuals who had been included in the 'Unified List' at one time or another and in whose cases the European Court of Human Rights subsequently found violations. The list is too long to be included here but I would be glad to share the information with any members who may be interested.

repeatedly arrested and imprisoned by the authorities. In March 2013, shortly after publishing on YouTube a sermon criticising government corruption, he was arrested on reportedly fabricated charges of possession of drugs. In November 2013, he was sentenced to two years' imprisonment. In July 2015, he was released and resumed his criticism of government repression and corruption, expressing support also for other government critics. Over the following months he was repeatedly summoned, arrested or administratively detained by the authorities. On 26 November 2015, a large-scale armed police operation was conducted in Nardaran, where Mr Bagirzade was living. Shooting broke out and seven people were killed, including two police officers. Mr Bagirzade, Mr Huseynov and others were arrested. They were charged with a series of serious offences, including murder, firearms offences, terrorism and attempt to overthrow the government. Mr Bagirzade, Mr Huseynov and others were convicted and sentenced to 20 years' imprisonment. During their trial, they gave detailed accounts of having been tortured in detention. These claims were not investigated. Several witnesses withdrew their statements, claiming that they had been made under torture. It is reported that the prosecution failed to present sufficient or cogent evidence against individual defendants, with numerous gaps in the prosecution case left unexplained. I consider that the overall circumstances – in particular the authorities' clear hostility towards and prior attempts to repress the detainees' political/ religious activities and the manifest flaws in their trials – are sufficient to raise a presumption that Mr Bagirzade and Mr Huseynov are political prisoners, in accordance with the Assembly's definition.

58. Afgan Mukhtarli is a journalist who reported on high-level corruption in Azerbaijan. In 2014, he moved with his family to Tbilisi, from where he continued criticising the Azerbaijani government. In early May 2017, a media outlet connected to the Azerbaijani government accused him and other government critics living in Georgia of committing crimes against the state and receiving foreign funding for illegal purposes. On 29 May, he was arrested at the Azerbaijani border and charged with illegal border crossing, currency smuggling and use of violence on a public official. According to Mr Mukhtarli, he had in fact been kidnapped in Tbilisi, his hands tied and his head covered. He was then driven out of town and twice transferred to other cars before arriving at the offices of the Azerbaijan border guards. In the second car, the passengers spoke Azerbaijani. He told me that the charges against him were absurd. €10,000 had been planted in his pocket, but when the authorities realised that this did not exceed the maximum permissible sum, they claimed that he had entered Azerbaijan at an irregular border crossing point, which allowed them to charge him with smuggling. There was evidence to show that the man he was supposed to have assaulted, causing serious injury, had accompanied him throughout his journey and remained with him at the office of the border guards. There was no explanation for why he would have entered Azerbaijan at a time when he was under attack in the national media, when he had left Azerbaijan precisely because he feared for his safety. At his pre-trial detention hearing on 31 May, there were injuries visible on his face, but the court did not order a forensic medical examination. His lawyers requests for video recordings of the office of the border guard was ignored. I consider that the overall circumstances – in particular his long-standing criticism of the government, its apparent hostility towards him and the extreme weakness of the case against him – are sufficient to raise a presumption that Mr Mukhtarli is a political prisoner, in accordance with the Assembly's definition.

59. Said Dadashbayli has been in prison since January 2007, when he and some 30 others were arrested and charged with creating a radical religious group and spying for Iran (which is particularly absurd, since Mr Dadashbayli is a devout Christian). Reports of the arrests and criminal proceedings describe numerous serious irregularities, including illegal searches, blatant planting of evidence, denial of access to a lawyer and severe ill-treatment – one of the co-accused died in detention, yet despite a medical certificate proving this, the government denied that he had ever been detained. The trial was closed to the public. The prosecution was unable to produce evidence that the supposed conspirators actually knew one another. Mr Dadashbayli was convicted and initially sentenced to 14 years' imprisonment, reduced to 13,5 years following changes to the Criminal Code in 2016. At the time of his arrest he worked for a joint US-Azerbaijani company and had previously worked for the Azerbaijani state oil company. He told me that he also had a very profitable business conducting foreign currency transactions and that he had been targeted by the authorities because he had refused to pay a large bribe to a senior official. In this respect, I note that Mr Dadashbayli was also convicted of large-scale manufacture or sale of counterfeit money or securities. This senior official had since been convicted of corruption charges, yet Mr Dadashbayli remains in prison. This case is a most absurd and blatant miscarriage of justice, which makes Mr Dadashbayli's continued detention particularly outrageous.

60. Mehman Huseynov was detained in March 2017 on defamation charges, after he had published a series of articles revealing cases of alleged corruption and torture by Azerbaijani officials. In December 2018, two months before the end of his sentence he was charged with violent resisting a prison guard, which is liable to a maximum sentence of seven years' imprisonment. The Monitoring Committee's co-rapporteurs stated that "there are justified grounds for the assumption that these new charges are clearly politically motivated and clearly designed to further silence a prominent human rights activist". Following an international outcry, the new charges were dropped in January 2019. The co-rapporteurs welcomed this,

whilst noting that “we cannot forget that this is not an isolated case.” In March 2019, following his release, they stated that “We have long considered Mr Huseynov [...] to be a political prisoner”. I share their views in every respect.

61. Finally, I would like to mention the ‘Ganja’ cases, dating from July 2018. Many of those whom I met in Azerbaijan, including members of the diplomatic community, expressed serious concerns about these cases. On 3 July 2018, someone tried to kill the governor of Ganja. A suspect was arrested. Photographs later emerged showing this suspect apparently unconscious, with signs of possible torture including cuts and bruises to his face and body. In response, a large group of demonstrators gathered spontaneously in the city centre. During the demonstration, someone attacked the police with a sword, killing two officers. The police then turned on the demonstration, dispersing it and arresting some 77 people. Some of them say that they had not even been part of the demonstration but were arrested as part of an indiscriminate round-up. The authorities claimed that they were all violent Islamic extremists. Persons arrested have given detailed descriptions of being tortured in detention and were denied access to lawyers or family. During the trials – which with no explanation were conducted in Baku, rather than Ganja – many journalists were either excluded or expelled from the courtroom. There were reportedly serious problems with the sufficiency and credibility of the prosecution evidence, which the court failed properly to examine – for example, defence requests to examine CCTV footage relied upon by the prosecution were dismissed. I consider that the overall circumstances – in particular, the fact that the detainees were arrested at a demonstration against the authorities, the authorities’ claim that they are religious extremists and the many serious procedural flaws – are sufficient to raise a presumption that most, and perhaps even all of them are political prisoners, in accordance with the Assembly’s definition. I welcome the fact that the Azerbaijani courts have already begun to review some of these cases and release certain prisoners.

## 7. Presidential pardons

62. Azerbaijan has a long tradition of presidential pardons for convicted prisoners. According to the deputy Prosecutor General, there have been 65 presidential pardons, along with 11 parliamentary amnesties, since Azerbaijan regained its independence in 1991, affecting some 40,000 people; the current president has issued 33 pardons, affecting some 5,000 people, with 431 – including over 50 people widely considered to be political prisoners – released following the most recent presidential pardon, in March 2019.

63. Along with the co-rapporteurs of the Monitoring Committee, I issued a statement in response to the March 2019 presidential pardon. I agree with the views expressed by Sir Roger Gale in that statement: “Whilst this latest pardon is of course welcome, the exercise of discretionary power by the executive is no substitute for an independent judiciary that prevents injustice and politically motivated detention in the first place. I call upon the Azerbaijani authorities to press ahead urgently with fundamental reform of the judicial system, in line with standards and recommendations of the Council of Europe.”<sup>63</sup>

64. For the individuals concerned, release for whatever reason is a relief. A presidential pardon does not, however, erase the traumatic experience of imprisonment, nor does it restore the time spent apart from family and friends or the missed opportunities. Pardons are often conditional on humiliating public apologies, including admissions of guilt made effectively under duress, which can prejudice future legal proceedings. They do not undo the injustice or remove the deterrence from future political or civil society engagement. Furthermore, this practice raises important questions. Why do so many people deserve to be pardoned if they had been justly imprisoned in the first place? And if imprisonment had been necessary and proportionate, why does it suddenly become unnecessary before the full sentence is served?

65. Such extensive use of presidential pardons also creates the unfortunate impression that the criminal justice system depends not on the independent and impartial decisions of judges or parole boards, but on the whim of the president. I recall also my earlier observation about the 2017 Executive Order calling on criminal judges to apply the law – as if this depended on instructions from the president. The functioning of the criminal justice system in individual cases should depend on the law and on the competence and professionalism of its officials, not on political intervention by the head of state.

## 8. Conclusions and recommendations

66. When Azerbaijan joined the Council of Europe, it accepted the existence of political prisoners and co-operated on measures to release them. Since then, its position has shifted to one of denial. With the

<sup>63</sup> “Rapporteurs welcome presidential pardon of prisoners in Azerbaijan, call for release of all political prisoners”, 19 March 2019.

numerous recent Court judgments, in particular those finding violations of Article 18, that position is no longer tenable. There can no longer be any doubt that Azerbaijan has a problem of political prisoners and that this problem arises from structural and systemic causes.

67. The Court, in the *Aliyev* judgment, and the Committee of Ministers, in its supervision of implementation of the *Ilgar Mammadov* and *Gafgaz Mammadov* groups of cases, have made clear that Azerbaijan must now address the underlying structural and systemic causes of politically motivated misuse of the criminal justice and system and administrative detention. The 2017 Executive Order and the 2019 Presidential Decree are important steps towards achieving this and some positive results have already been seen. Much more remains to be done, however, especially in relation to the independence of the judiciary, but also in other areas, including the Prosecutor General's office, prevention of ill-treatment and conditions of detention. I welcome and fully support the fact that the Court will continue to oversee Azerbaijani's implementation of its obligations under the Convention, and that the Committee of Ministers will supervise the progress of the reforms that are necessary to address the underlying problems.

68. The Court process is judicial and the Committee of Ministers is a diplomatic body. Both look at historical events (often quite old, due to the length of the Court's proceedings) or particular aspects of a wider situation. The Assembly's role is distinct and complementary. We can respond more quickly to recent and current cases, coming to provisional conclusions without going through lengthy judicial proceedings. We can look at the bigger picture, combining different aspects, such as both criminal and administrative detention together, and the relevance of detention conditions. As parliamentarians, we can support (or criticise) the work of governments in the Committee of Ministers. We can also call on the Azerbaijani authorities to take steps that go beyond the action necessary to implement the Court's judgments. And we can engage with our Azerbaijani colleagues to encourage them to take action themselves, in their role either as legislators or as oversight of the executive.

69. On this basis, I propose a series of recommendations, as set out in the attached draft resolution and recommendation, to solve the problem of political prisoners once and for all. This problem must be solved in the interest of both democracy in Azerbaijan in general, and more particularly of all Azerbaijani citizens who have spent time, and are still spending time in prison, often in terrible conditions, simply for exercising their freedoms guaranteed under the European Convention on Human Rights.