

**COMPLAINT BY THE NETHERLANDS HELSINKI COMMITTEE TO THE
INTERNATIONAL ASSOCIATION OF PROSECUTORS REGARDING THE
PROSECUTION SERVICE OF AZERBAIJAN**

MARCH 2018

EXECUTIVE SUMMARY

1. Today, human rights defenders, journalists and anyone critical towards the government in Azerbaijan are confronted with an increasingly restrictive working environment. Prosecutors should in principle play a key role in the administration of justice and protection of fundamental freedoms that allow for citizens to critically report and advocate on government policies, such as the freedom of assembly and association and the freedom of expression.
2. However, when the exercise of these freedoms in Azerbaijan is concerned, prosecutors mostly play a role which is obstructive rather than conducive to the protection of human rights. Prosecutors thus become instruments for the governmental authorities in the execution of repressive policies towards human rights defenders and civil society at large.
3. This complaint to the International Association of Prosecutors (IAP) analyses the instrumental role played by Azerbaijani prosecutors in *de facto* criminalization of legitimate activities of journalists, human rights defenders and civil society in Azerbaijan. The complaint report presents references to opinions by international organizations and focuses on selected cases of politically-motivated prosecutions of prominent civic leaders from Azerbaijan.
4. **The report contends that the body of available evidence on the functioning of public prosecutors in the country in recent years is illustrative of a systemic institutional practice that implicates the prosecution service of Azerbaijan in ‘dishonourable conduct’ in violation of the professional standards adopted by the IAP.**
5. The report first discusses the main structural factors compromising the independence of prosecutorial authorities in Azerbaijan. The lack of independence of the Azerbaijani prosecutorial authorities contrasts starkly with the independent position of prosecution services as envisaged by the International Association of Prosecutors’ Standards of Professional responsibility and statement of the essential duties and rights of prosecutors (Chapter II).
6. In addition to these formal or structural factors compromising the independent position of the Azerbaijani prosecution services, there also exists a *de facto* legal practice in Azerbaijan, where individual prosecutors tend to go beyond what the Azerbaijani legal system necessitates or dictates them to do, making professional choices in violation of their individual responsibility under the IAP Standards and – often – also in violation of Azerbaijani criminal laws and procedures.
7. The report highlights three main issues in this context: (1) the prosecution of human rights defenders and those voicing criticism of the Azerbaijani government on the basis of trumped-up charges, without supporting evidence; (2) the problem of the use of torture and ill-treatment of persons in custody in Azerbaijan and the use in court of “confessions” obtained without credible investigation of alleged torture and ill-treatment; and (3) the denial of fundamental rights of persons in custody, including

notably the right to legal representation and adequate time for the preparation of the accused's defense (Chapter III).

8. Subsequently, the complaint report provides an overview of recent reports, statements and conclusions by intergovernmental organizations regarding the justice system and the rule of law in Azerbaijan in the context of criminalization of the defence of human rights, including statements from the United Nations, Council of Europe, the Organization for Security and Cooperation in Europe and the European Union.
9. The report also contains case summaries of six cases of human rights defenders, which illustrate in more detail how Azerbaijani prosecutors play an instrumental role for the Azerbaijani governmental authorities in the execution of repressive policies towards human rights defenders and civil society at large.
10. Finally, the report demonstrates how persons from within the Azerbaijani prosecution service, who speak out against corruption and human rights violations, are silenced. A striking case concerns Rufat Safarov, an Azerbaijani prosecutor who resigned in 2015 in protest of governmental abuse of power and corruption in the prosecution service. In a prosecution that raises many procedural doubts, he was accused of having received bribes himself from a number of local officials, tried and sentenced to nine years imprisonment.
11. The Netherlands Helsinki Committee seeks to emphasize that the Constitution of the IAP stipulates that its members can be suspended or expelled if it is considered that the member in question 'has been guilty of dishonourable conduct or that continuation of his/her or its active participation in the activities of the Association or of his/her or its membership is detrimental to the Association'.¹
12. The Netherlands Helsinki Committee therefore requests the IAP to initiate steps to consider suspension of the membership of Azerbaijani entities from the organization and to furthermore make continued membership dependent on credible steps towards improvement of compliance with professional standards.

¹ Article 6.2 of the Constitution of the IAP in conjunction with Annex 3 'Suspension from membership'. International Association of Prosecutors, 'Constitution of the International Association of Prosecutors', September 2017.

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I. INTRODUCTION

1. Azerbaijan was once the first secular and democratic republic in the Islamic world. Today, however, the situation in Azerbaijan is characterized by an ‘ongoing crackdown on civil society and independent voices’.² Voices critical of the government’s policies are silenced to the degree that analysts generally consider the country’s political system as ‘authoritarian’ and ‘not free’.³
2. **On paper, the Azerbaijani legal order seems rather progressive and relatively open to international norms such as human rights.** The apparent progressive Azerbaijani constitution, which contains *i.a.* a separate chapter on fundamental rights, indeed seems to reflect ‘the ideas of European constitutionalism by guaranteeing fundamental rights and freedoms’.⁴
3. Constitutionally, international norms and treaties to which Azerbaijan has acceded – such as human rights conventions – also receive a prominent place, theoretically trumping national laws in case of conflict.⁵ Domestic laws furthermore explicitly require the Azerbaijani judiciary to ‘take into consideration the international documents to which Azerbaijan adhered when examining the cases’, meaning that domestic judges are formally required to interpret the Azerbaijani laws in accordance with international human rights instruments to which Azerbaijan has acceded.⁶
4. The Azerbaijani authorities also generally claim to cooperate with international fora on the improvement of the human rights situation in Azerbaijan, such as the UN High Commissioner for Human Rights, the Organization for Security and Co-operation in Europe, the Council of Europe and the European Union.⁷ Azerbaijan became one of the first 47 members of the newly established UN Human Rights Council in June 2006 and has, for instance, developed a National Action Plan on the Protection of Human Rights.⁸
5. **The factual situation contrasts starkly with these aspirations, however.** Over recent years, the human rights situation in Azerbaijan has aggravated in high tempo. Since 2012, the Azerbaijani

² United Nations Office of the High Commissioner for Human Rights, ‘Zeid condemns civil society crackdown in Azerbaijan’, 8 September 2015. Available online via: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E> (last accessed 5-3-2018).

³ See for example, the Economist Intelligence Unit, Democracy Index 2017. Available online via: <http://www.eiu.com/topic/democracy-index> (last accessed 5-3-2018). Freedom House, ‘Freedom in the World Index 2018’. Available online via: <https://freedomhouse.org/report/freedom-world/2018/azerbaijan> (last accessed 5-3-2018).

⁴ Hajiyev, K., ‘Azerbaijan: the directions of influence of the case law of the European Court of Human Rights in Azerbaijan’, in: Motoc, I., Ziemele, I. (eds.), ‘The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives’, Cambridge University Press 2016, p. 58. Next to basic fundamental rights such as the right to life, the right to freedom, the right to property, the Azerbaijani Constitution furthermore stipulates that the ‘Azerbaijani state is [a] democratic, legal, secular, unitary republic’ and that ‘the legislative, executive and judicial power interact and are independent within the limits of their authority’, see Article 7 (1) and (4) of the Azerbaijani Constitution, English translation available via <http://en.president.az/azerbaijan/constitution> (last accessed 5-3-2018).

⁵ With the sole exception of the ‘Constitution of the Azerbaijan Republic and acts accepted by way of referendum’, see Article 148 and 151 of the Azerbaijani Constitution, English translation available via <http://en.president.az/azerbaijan/constitution> (last accessed 5-3-2018).

⁶ Hajiyev, K., ‘Azerbaijan: the directions of influence of the case law of the European Court of Human Rights in Azerbaijan’, in: Motoc, I., Ziemele, I. (eds.), ‘The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives’, Cambridge University Press 2016, p. 59. See for instance the Azerbaijani Law of 10 May 1997 on Courts and Judges.

⁷ See for example the Permanent Mission of the Republic of Azerbaijan to the United Nations’ statement titled ‘Human Rights’. Available online via: <http://un.mfa.gov.az/content/34> (last accessed 5-3-2018).

⁸ Permanent Mission of the Republic of Azerbaijan to the United Nations’ statement titled ‘Human Rights’. Available online via: <http://un.mfa.gov.az/content/34> (last accessed 5-3-2018). For the National Action Plan on Human Rights, see the Presidential Order 1889 on a ‘National Action Plan on the Protection of Human Rights’ as adopted on 28 December 2006.

government has intensified its harassment of civil society organizations and human rights defenders into a complete ‘crackdown’ on virtually all critical voices in Azerbaijan.⁹

6. The recently amended domestic legislation concerning the (financial) operation of non-governmental organizations – imposing difficult, bureaucratic and often vague requirements in relation to their registration, funding and reporting requirements – has been considered ‘increasingly harsh and restrictive’ by the European Court of Human Rights and generally renders the work of civil society organizations in Azerbaijan increasingly arduous.¹⁰
7. Domestic actors voicing criticism – such as human rights defenders (HRDs)¹¹, independent journalists and others voicing opinions critical of the governments policies are furthermore arrested on the basis of trumped-up and politically motivated charges, such as ‘fraud’, ‘hooliganism’ or ‘illegal entrepreneurship’. These individuals are often imprisoned following criminal trials carried out in apparent breach of not only international human rights conventions Azerbaijan has adhered to, but also numerous domestic rights and procedural laws in Azerbaijan.
8. Prosecutors could in theory play an essential role in the protection of fundamental freedoms. However, when the exercise of these freedoms in Azerbaijan is concerned, Azerbaijani prosecutors mostly seem to play a role which is obstructive rather than conducive to the protection of human rights. Individual prosecutors thus become instruments for the executive branch of government in the execution of repressive policies towards human rights defenders and civil society at large. **The purpose of this background report is to illustrate the role Azerbaijani prosecutors play in the face of these steps to criminalise the right to defend human rights.**
9. Human rights defenders, journalists, bloggers and persons engaging in peaceful criticism of the government have been in many cases imprisoned in Azerbaijan on the basis of politically-motivated charges. While some have been released – according to the latest reports – there currently remain a total of 158 political prisoners in Azerbaijan.¹² Among the many dire cases, mention can be made of the 6-8 years prison sentences awarded to eight (young) members of the youth opposition movement NIDA (‘Exclamation’), who were arrested during anti-government demonstrations in 2013 and subsequently charged with ‘hooliganism’ and the possession of drugs.
10. Among this group of young protesters was for instance 21-year old blogger and university student Ilkin Rustamzade, who was first charged with ‘hooliganism’ following a satirical video posted on Youtube

⁹ United Nations Office of the High Commissioner for Human Rights, ‘Zeid condemns civil society crackdown in Azerbaijan’, 8 September 2015. Available online via: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E> (last accessed 5-3-2018).

¹⁰ European Court of Human Rights, *Rasul Jafarov v Azerbaijan*, (Application no. 69981/14), judgement of 17 March 2016.

¹¹ Human Rights Defenders (HRDs) are those who, individually and in association with others, promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels. UN General Assembly, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’, A/RES/53/144 (9 December 1998), art. 1. HRDs often work through Non-Governmental Organizations (NGOs, which have been described by the ECtHR as essential ‘watchdogs’ of democratic societies, see the case of *Vides Ajzsardzibas Klubs v. Latvia* no. 57829/00 Judgement of 27 May 2004, para 42.

¹² See World Movement for Democracy, ‘A unified list of political prisoners in Azerbaijan: Covering the period up to 25 May 2017’. Available online via: https://www.helpsethemfree.org/wp-content/uploads/2018/01/Political-prisoners-in-Azerbaijan-Report_May_2017-1.pdf (last accessed 5-3-2018).

only to be sentenced to eight years in prison based on charges of ‘inciting violence and organizing mass disorder’ in connection to a peaceful protest in March 2013.¹³

11. Other youth members of NIDA that were imprisoned on politically-motivated charges include 22-years old Bayram Mammadov and Giyas Ibrahimov, who were arrested for spraying graffiti on the statue of the former President of Azerbaijan and – having been tortured into confessing the illegal possession of drugs – subsequently sentenced for 10 years imprisonment.¹⁴
12. Political opposition-leader Ilqar Mammadov from the Republican Alternative (REAL) was furthermore sentenced to seven years imprisonment, a sentence which has been heavily criticized by international observers. The European Court of Human Rights stated in clear terms that Mammadov’s pre-trial detention and prison sentence had ‘the actual purpose [...] to silence or punish the applicant for criticising the Government’.¹⁵
13. The Azerbaijani government continues to refuse the execution of this judgement of the European Court of Human Rights, however, and Mammadov remains imprisoned until today. This legal-political deadlock has recently triggered the Council of Europe’s Committee of Ministers to establish – for the first time in the Council of Europe’s history – infringement proceedings against Azerbaijan over the non-implementation of a judgment of the European Court of Human Rights.¹⁶
14. The cases described above unfortunately do not stand alone, but are part of what the Council of Europe’s Commissioner for Human Rights Nils Muižnieks has described as a ‘pattern of reprisals’ against individual human rights defenders and prominent journalists in response to their ‘engagement in activities which should be perfectly legal in a well-functioning democracy’.¹⁷
15. The case law of the European Court of Human Rights provides ample examples of such cases where Azerbaijani prosecutors initiate criminal proceedings on the basis of trumped-up charges, disregarding constitutional guarantees of individual civil rights and fundamental principles. In the case of the Azerbaijani human rights defender Rasul Jafarov, for instance, the European Court of Human Rights stated that ‘the actual purpose of the impugned measures was to silence and punish the applicant for his activities in the area of human rights’.¹⁸
16. This negative trend also affects prosecutors within the Azerbaijani prosecution service which try to speak out against corruption and human rights violations. This is demonstrated most clearly by the case of Rufat Safarov, an Azerbaijani prosecutor who resigned in 2015 in protest of governmental abuse of

¹³ See regarding Rustamzade’s case, for instance Radio Free Europe/Radio Liberty, Azerbaijan Urged to Free Imprisoned Activist, 17 May 2017. Available online via: <https://www.rferl.org/a/azerbaijan-hrw-urges-activist-rustamzade-freed/28493357.html> (last accessed 5-3-2018).

¹⁴ See furthermore for the case of Bayram Mammadov: Amnesty International, ‘Azerbaijan: Ten years in jail for youth activist who sprayed graffiti is a travesty of justice’, 26 October 2016. Available online via: <https://www.amnesty.org/en/latest/news/2016/10/azerbaijan-ten-years-in-jail-for-youth-activist-who-sprayed-graffiti-is-a-travesty-of-justice/> (last accessed 5-3-2018).

¹⁵ European Court of Human Rights, Ilgar Mammadov v. Azerbaijan (Application no. 15172/13), Judgement of 22 May 2014.

¹⁶ Council of Europe, ‘Committee of Ministers launches infringement proceedings against Azerbaijan’, 5 December 2017. Available online via: https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEvoSr24HJ2/content/council-of-europe-s-committee-of-ministers-launches-infringement-proceedings-against-azerbaijan?inheritRedirect=false (last accessed 5-3-2018).

¹⁷ See intervention in the case of Rasul Jafarov, see European Court of Human Rights, Rasul Jafarov v Azerbaijan, (Application no. 69981/14), judgement of 17 March 2016. para 104.

¹⁸ Ibid., para 162

power and corruption in the prosecution service and was subsequently accused of having received bribes himself from a number of local officials, tried and sentenced to nine years imprisonment. His case demonstrates how people from within the Azerbaijani prosecution service who speak out against corruption and human rights violations are silenced.

17. These developments have of course not gone unnoticed and recent years have demonstrated an **increasing criticism of intergovernmental organizations and observers regarding the human rights situation in Azerbaijan**. Chapter IV of this background report will provide an overview of statements from international organizations in relation to the rule of law and the justice system in Azerbaijan, focusing on different organs of the United Nations, the Council of Europe, the Organization for the Security and Cooperation in Europe and the European Union.
18. In reaction to this international criticism, the Government of Azerbaijan has released some of the most prominent human rights defenders under a Presidential Amnesty. However, many remain wrongfully imprisoned.¹⁹ Those that have been released under Presidential Amnesty have furthermore not been formally acquitted and therefore often remain unable to practice their profession. Others are in many cases still under travel bans and thus unable to leave the country.
19. The current background report focuses on the instrumental role played by Azerbaijani prosecutors in the criminalization of human rights defenders in Azerbaijan. In **method**, the report is the result of a desktop-based research focused on the position of the prosecutorial authorities within the legal system of Azerbaijan. The factual situation will be described on the basis of a review of case law of the European Court of Human Rights, trial observation reports from non-governmental organizations, including the NHC's own trial observation records and official reports and public statements from international organizations regarding the prosecutorial authorities in Azerbaijan.
20. The report takes into account the legal 'architecture' as described for instance by the Azerbaijani Constitution and domestic laws regulating the prosecutorial authorities. However, emphasis lies on the way in which prosecutors do or do not *de facto* comply with the responsibility to comply with internationally agreed human rights standards and, more specifically, whether they comply with the professional standards that have been adopted by the International Association of Prosecutors (IAP).

¹⁹ See, for instance, the case of Mehman Huseynov, which will be described in more detail under Chapter VI of the current report.

II. LACK OF INDEPENDENCE OF PROSECUTION SERVICES IN AZERBAIJAN IN VIOLATION OF IAP STANDARDS

A. INTRODUCTION

21. This chapter highlights the main structural factors compromising the independence of the prosecutorial authorities in Azerbaijan. The principle of the independence of prosecutorial authorities has been generally accepted and has been enshrined as a basic principle in *i.a.* the UN Guidelines on the Role of Prosecutors²⁰ and the (more recent) Standards of Professional responsibility and statement of the essential duties and rights of prosecutors as adopted by the International Association of Prosecutors.²¹
22. The promotion and enhancement of principles and standards ‘necessary for the proper and independent prosecution of offences’ has also been identified as ‘one of the most important objects’ of the International Association of Prosecutors.²² The importance of the independence of prosecutorial authorities has furthermore been emphasized by the Council of Europe’s Committee of Ministers and its Venice Commission.²³
23. In contrast with these fundamental principles, various structural factors in Azerbaijan persist, which negatively affect the independence of the prosecutorial authorities. As will be demonstrated in more detail below, the strong Presidential oversight over ongoing criminal investigations and the influence of the executive over both the appointment and promotion procedures within the prosecution service of Azerbaijan render the independence of the prosecutorial authorities problematic, since they create various institutional incentives for individual prosecutors to align their professional decisions with governmental preferences. The strictly hierarchical system furthermore makes independent decisionmaking for low-ranking prosecutors almost impossible, while the disciplinary procedures for prosecutors in Azerbaijan also raise a risk of political retribution in response to unwelcome decisions.
24. The lack of independence of the prosecutorial authorities in Azerbaijan is not in accordance with several provisions of the IAP Standards, which stipulate *i.a.* that prosecutors shall ‘strive to be [...] independent and impartial’; that ‘the use of prosecutorial discretion [...] should be exercised independently and be free from political interference’; and that any instructions from non-prosecutorial authorities (if even allowed) should be ‘transparent, consistent with lawful authority

²⁰ United Nations Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Available online through <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx> (last accessed 5-3-2018).

²¹ Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

²² International Association of Prosecutors, ‘The IAP Vision’. Available online via: <http://www.penal.org/en/international-association-prosecutors> (last accessed 7-3-2018).

²³ See the Council of Europe’s Committee of Ministers, ‘The Role of Public Prosecution in the Criminal Justice System’ (6 October 2000) Recommendation Rec(2000)19 and the Council of Europe’s Venice Commission, ‘Report on the independence of the judicial system. Part II: The prosecution service’ (16 March 2010) Study N° 494 / 2008.

[and] subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence'.²⁴

B. STRUCTURAL FACTORS COMPROMISING THE INDEPENDENCE OF THE PROSECUTORIAL AUTHORITIES IN AZERBAIJAN

25. The Azerbaijani prosecution service is the constitutional body responsible for criminal investigations and prosecutions. The Azerbaijani Prosecutor's Office is considered to be part of the 'judicial branch' of power and is 'meant to enjoy an independent status within it'.²⁵
26. Generally, it can be observed that the relatively strong and extensive powers of the Azerbaijani Presidency have resulted in a distortion of the so-called checks and balances in Azerbaijan. In the language of the Group of States against Corruption (GRECO), it can be stated at the outset that the 'institutional set-up [in Azerbaijan] grants particularly strong powers to the President and the executive, who exercise considerable influence on the legislature and the judiciary, including the Prosecutor's Office. This environment lacks transparency and is prone to political favouritism and corruption'.²⁶
27. A first structural factor compromising the independence of the prosecutorial authorities in Azerbaijan, lies in the **strong Presidential oversight** over the Azerbaijani prosecutorial authorities. The Prosecutor-General generally accounts to both the Azerbaijani parliament and the Azerbaijani President. The Prosecutor-General informs the parliament of its activities on an annual basis, 'except for criminal cases under investigation'.²⁷ The President of Azerbaijan is informed more actively, however, with the Prosecutor-General informing the President both annually and upon request 'including criminal cases under investigation'.²⁸
28. The GRECO has criticized this practice, stating that the Azerbaijani President's 'right to familiarise him/herself with the investigation and prosecution in specific cases, may be perceived as intervening in the autonomy of the Prosecutor's Office and the independence of individual prosecutors thus creating opportunities for improper influence, disguised orders or indirect pressure'.²⁹ The GRECO has recently concluded that its recommendation to eliminate any 'undue influence and interference in the investigation of criminal cases' has not been implemented by the Azerbaijani authorities.³⁰

²⁴ Articles 1 (e), 2.1 and 2.2 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

²⁵ See GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014, para 85. See furthermore Article 133 of the Azerbaijani Constitution, English translation available via <http://en.president.az/azerbaijan/constitution> (last accessed 5-3-2018).

²⁶ See GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014.

²⁷ See GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014, para 85. See furthermore Article 4 of the Prosecutor's Office Act.

²⁸ See GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014, para 85. See furthermore Article 4 of the Prosecutor's Office Act.

²⁹ See GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014, p. 29, para 90.

³⁰ See GRECO, Fourth Round Compliance Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 2 December 2016, p. 14, para 70.

29. This Presidential oversight over any criminal cases under investigation also constitutes an apparent breach of the Azerbaijani Criminal Procedural Code, which explicitly and exhaustively lists all entities and persons which are entitled to ‘familiarise’ themselves with ongoing criminal investigations and does not mention the Azerbaijani President in that regard.³¹
30. In its most recent report, the GRECO explicitly expressed its regret ‘that no action has been taken’ to this effect by the Azerbaijani authorities, stating *i.a.* that ‘[s]ubjecting the Prosecutor’s Office to the concurrent oversight of the Head of State, and this without any such safeguards, is clearly problematic’.³² In September 2017, the Parliamentary Assembly of the Council of Europe has also stated explicitly that it ‘remains concerned about the presidential oversight of the Prosecutor’s Office [in Azerbaijan]’.³³
31. The **appointment procedure** for individual prosecutors also raises questions with regard to the independence of prosecutors in Azerbaijan. Both the abovementioned ‘territorial’ and the ‘specialized’ prosecutors are appointed by the Prosecutor General in consultation with and only with the consent of the President of Azerbaijan.³⁴ Notably GRECO has criticized the Azerbaijani system for ‘lacking transparency and [being] prone to political favouritism and corruption’.³⁵
32. While the Azerbaijani authorities have recently amended the relevant appointment procedures – prima facie with some positive effects – the GRECO has expressed in its most recent report its continued concern ‘about the absence of any measure to remove the direct presidential oversight of the Prosecutor’s Office’.³⁶
33. As the Azerbaijani authorities acknowledged themselves, the ‘setting up and the closure of prosecution offices are indeed regulated by means of presidential orders’.³⁷ Again the Azerbaijani authorities did not implement the GRECO’s recommendations in this regard and – until today – the Azerbaijani President ‘retains the faculty to influence significantly the organisation / re-organisation of the prosecutorial services’.³⁸
34. The President furthermore exercises significant influence over **the promotion** of individual prosecutors to high-ranking positions within the Azerbaijani prosecutorial authorities, with the President appointing ‘all senior prosecutors’ in Azerbaijan.³⁹ This practice arguably creates institutional incentives for

³¹ See GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014, p. 29

³² GRECO, Fourth Round Compliance Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 2 December 2016, p. 14, para 70.

³³ Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) ‘The functioning of democratic institutions in Azerbaijan’, Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 3.

³⁴ Article 133, para 4 of the Azerbaijani Constitution, English translation available via <http://en.president.az/azerbaijan/constitution> (last accessed 5-3-2018).

³⁵ See GRECO, Evaluation IV Report (2014), 2E, Fourth Round Evaluation Report on Azerbaijan (adopted on 10 October 2014), p. 3.

³⁶ GRECO, Fourth Round Compliance Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 2 December 2016, p. 20, para 116.

³⁷ GRECO, Fourth Round Compliance Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 2 December 2016, p. 13, para 68.

³⁸ GRECO, Fourth Round Compliance Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 2 December 2016, p. 14, para 70.

³⁹ GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014, para 90.

individual prosecutors to align their professional decisions with governmental preferences and has already led the GRECO to ‘expect[...] progress towards the setting up of a transparent and impartial system for the appointment to senior positions.’⁴⁰

35. Persons who have served with the public prosecutor’s office for at least five years and aligned themselves with its policies are more likely to be selected for the position of public prosecutor.⁴¹ The age requirement of minimal 30 years in order to be nominated for senior positions within the prosecution services furthermore disables ‘recent graduates, such as young lawyers, and those who have not already worked with the public prosecutor’s office to enter the profession.’⁴²
36. The Presidential influence on promotions within the Azerbaijani prosecution services, is all the more significant with a view to the **strictly hierarchical system** within the Azerbaijani prosecutorial authorities. Due to this strong hierarchy within the Azerbaijani prosecution service there exists virtually no *de facto* independence of prosecutors in Azerbaijan. So-called ‘territorial’ and ‘specialized’ prosecutors are both subordinated to the prosecutor general, which runs his administration in a strictly hierarchical and centralized manner.⁴³
37. While the hierarchical system already barely allows ‘lower-rank public prosecutors’ to exercise their prosecutorial discretion independently, public prosecutors are also empowered to formally instruct specific investigations. Public prosecutors are obliged to implement these instructions from their superiors, which may include ‘changing, abrogating, recalling and substituting their decisions and acts made by them’.⁴⁴
38. The existing **disciplinary procedures** for prosecutors in Azerbaijan also raise questions with regard to the independent execution of prosecutorial discretion. The criteria on the basis of which prosecutors may be dismissed are considered to be ‘overly broad, which enables political authorities to arbitrarily dismiss prosecutors if they oppose instructions from their superiors or government policies in general’.⁴⁵
39. Bychawska-Siniarska has furthermore recently documented on the basis of extensive interviews with Azerbaijani lawyers that ‘disciplinary proceedings may be used in order to silence those who have critical opinions of superiors’.⁴⁶ Special mention can be made of the case of public prosecutor Rufat Safarov, who was even criminally charged following a newspaper article of his hand criticizing

⁴⁰ GRECO, Fourth Round Compliance Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 2 December 2016, p. 20, para 116.

⁴¹ Bychawska-Siniarska, D., ‘The Functioning of the Judicial System in Azerbaijan and its impact on the Right to a Fair Trial of Human Rights Defenders’, Helsinki Foundation for Human Rights & Netherlands Helsinki Committee (2016), p. 12.

⁴² Bychawska-Siniarska, D., ‘The Functioning of the Judicial System in Azerbaijan and its impact on the Right to a Fair Trial of Human Rights Defenders’, Helsinki Foundation for Human Rights & Netherlands Helsinki Committee (2016), p. 12. See furthermore article 29 of the Azerbaijani Prosecutor’s Office Act.

⁴³ See article 133, para 2 of the Azerbaijani Constitution, English translation available via <http://en.president.az/azerbaijan/constitution> (last accessed 5-3-2018).

⁴⁴ Bychawska-Siniarska, D., ‘The Functioning of the Judicial System in Azerbaijan and its impact on the Right to a Fair Trial of Human Rights Defenders’, Helsinki Foundation for Human Rights & Netherlands Helsinki Committee (2016), p. 11. Refs to Prosecutor’s Office Act, art. 16. See also See GRECO, Fourth Round Evaluation Report on Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors, Adopted on 10 October 2014, para 88.

⁴⁵ Bychawska, ‘The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders’, Sep 2016, p. 4 and p. 14. See furthermore article 133, paras 3-4 of the Azerbaijani Constitution, English translation available via <http://en.president.az/azerbaijan/constitution> (last accessed 5-3-2018).

⁴⁶ Bychawska-Siniarska, D., ‘The Functioning of the Judicial System in Azerbaijan and its impact on the Right to a Fair Trial of Human Rights Defenders’, Helsinki Foundation for Human Rights & Netherlands Helsinki Committee (2016), p. 16.

corruption in his own prosecutor's office of the Azerbaijani Zardab district and sentenced to 9 years imprisonment.⁴⁷ This case will be discussed in more detail in Chapter VI.

C. CONCLUSION

40. In contrast with the generally accepted principle of the independence of prosecutors, various structural factors in Azerbaijan persist, which negatively affect the independence of the prosecutorial authorities.
41. This chapter has highlighted and discussed the main structural factors compromising the independence of the prosecutorial authorities in Azerbaijan. It has been demonstrated that the strong Presidential oversight over ongoing criminal investigations and the influence of the executive over both the appointment and promotion procedures within the prosecution service of Azerbaijan render the independence of the prosecutorial authorities problematic, since they create various institutional incentives for individual prosecutors to align their professional decisions with governmental preferences. The strictly hierarchical system furthermore makes independent decisionmaking for low-ranking prosecutors almost impossible, while the disciplinary procedures for prosecutors in Azerbaijan also raise a risk of political retribution in response to unwelcome decisions.
42. The lack of independence of the prosecutorial authorities in Azerbaijan is not in accordance with several provisions of the IAP Standards, which stipulate *i.a.* that prosecutors shall 'strive to be [...] independent and impartial' and that 'the use of prosecutorial discretion [...] should be exercised independently and be free from political interference'.⁴⁸ Notably the strong Presidential oversight over the prosecutorial authorities and his *de facto* right to familiarise himself with ongoing criminal investigations also seems contrary to article 2.2. of the IAP States, which requires more specifically that any instructions from non-prosecutorial authorities (when allowed) should be 'transparent, consistent with lawful authority [and] subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence'.⁴⁹

⁴⁷ See for instance the United States of America's Department of State, '2016 Country Reports on Human Rights Practices: Azerbaijan', 3 March 2017. Available online via <https://www.state.gov/j/drl/rls/hrrpt/2016/eur/265396.htm> (last accessed 5-3-2018).

⁴⁸ Articles 1 (e) and 2.1 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁴⁹ Article 2.2 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

III. DE FACTO LEGAL PRACTICE OF AZERBAIJANI PROSECUTORS IN VIOLATION OF IAP STANDARDS

A. INTRODUCTION

43. The previous chapter has highlighted and analysed the main structural factors compromising the independence of the prosecutorial authorities in Azerbaijan, which constitute a violation of the IAP Standards. In addition to these formal or structural factors compromising the independent position of the Azerbaijani prosecution services, there exists a *de facto* legal practice in Azerbaijan, where individual prosecutors tend to go beyond what the Azerbaijani legal system necessitates or dictates them to do, making professional choices in violation of their individual responsibility under the IAP Standards and – often – also in violation of Azerbaijani criminal laws and procedures.
44. This chapter will highlight three such issues in particular: (1) the prosecution of human rights defenders and those voicing criticism of the Azerbaijani government on the basis of trumped-up charges, without supporting evidence; (2) the problem of the use of torture and ill-treatment of persons in custody in Azerbaijan and the use in court of “confessions” obtained without credible investigation of alleged torture and ill-treatment; and (3) the denial of fundamental legal safeguards of persons in custody, including notably the right to legal representation and adequate time for the preparation of the accused’s defense.

B. SELECTIVE JUSTICE: PROSECUTION BASED ON TRUMPED-UP CHARGES WITHOUT EVIDENCE

45. A first issue that can be identified in the legal practice of the Azerbaijani prosecution services is the general practice of **selective justice** in criminal cases against human rights defenders, journalists and others voicing criticism of the government’s policies in Azerbaijan based on trumped-up charges, without supporting evidence. This practice constitutes a clear violation of the Standards of Professional responsibility and statement of the essential duties and rights of prosecutors as adopted by the International Association of Prosecutors.⁵⁰
46. Increasingly, Azerbaijani prosecutors employ the Azerbaijani criminal justice system to charge and detain critical voices in the country. Prosecutors thus apply regular criminal laws and procedures – which are often in line with international standards on paper at least – in a *de facto* manner in clear violation of Azerbaijan’s obligations under international law and also in breach of many individual rights guaranteed by the Azerbaijani constitution.
47. This practice has also been criticized by international observers. For instance, the Council of Europe’s independent Commissioner for Human Rights has expressed his concern ‘about the apparent

⁵⁰ Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

intensification of the practice of unjustified or selective criminal prosecution of journalists and others who express critical opinions, including bloggers and online activists'.⁵¹

48. The European Union Parliament has also explicitly recognized in a resolution that in 'dozens' of cases concerning 'political activists, rights defenders, journalists, bloggers and social media activists', the Azerbaijani authorities – more specifically, the Azerbaijani prosecution services – have based criminal proceedings on the basis of 'trumped-up charges, including hooliganism, drug possession, tax evasion, and even treason'.⁵²
49. Chapter IV of the current report will provide a more extensive overview of statements from intergovernmental organizations concerning the Azerbaijani criminal justice system and the practice of criminal prosecutions of human rights defenders and other critical voices on the basis of trumped-up charges with a view to 'silencing' criticism of the Azerbaijani government.⁵³
50. Chapter V will furthermore summarily discuss in more detail six cases of Azerbaijani human rights defenders, where the Azerbaijani prosecution services played a decisive role in the restriction of their working space and even contributed to the obstruction of their individual human rights. The legal proceedings in these cases demonstrate how Azerbaijani prosecutors are not afraid to proceed with criminal prosecutions of individuals without evidence of a criminal offence.
51. For instance, the case of the renowned Azerbaijani human rights defender Rasul Jafarov can be mentioned in this context. Jafarov was arrested and *i.a.* charged with illegal entrepreneurship, large-scale tax evasion and abuse of power on the basis of his alleged failure to report foreign grants for his human rights activities.⁵⁴
52. The European Court of Human Rights stated very clearly that 'apart from relying on the applicant's alleged failure to comply with the reporting requirement to register the grants, which in itself was not criminalised under the domestic law, the prosecuting authorities never demonstrated the existence of any information or evidence showing that the applicant might have used the money for generating profit or for purposes other than those indicated in the grant agreements, or that the purposes indicated in the grant agreements were both commercial and illegal. Likewise, the Government failed to demonstrate that any other witness statements, documents or other evidence or information existed which could serve as the basis for the suspicion that the applicant had engaged in criminal activities.'⁵⁵

⁵¹ Council of Europe's Commissioner for Human Rights, 'Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property', 23 April 2014, CommDH(2014)10.

⁵² See European Parliament resolution of 18 September 2014 on the persecution of human rights defenders in Azerbaijan (2014/2832(RSP)).

⁵³ As stated by the European Court of Human Rights in the case of Rasul Jafarov. See European Court of Human Rights, *Rasul Jafarov v Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, para 162. The UN Working Group on Arbitrary Detention also spoke explicitly about 'silencing' human rights defenders, journalists, political and religious leaders. See for instance United Nations Office of the High Commissioner for Human Rights, Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16-25 May 2016). Available online via www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E#sthash.5qsnheiY.dpuf (last accessed 5-3-2018).

⁵⁴ Mr Jafarov was formally charged under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the [Azerbaijani] Criminal Code'. See European Court of Human Rights, *Rasul Jafarov v Azerbaijan*, (Application no. 69981/14), judgement of 17 March 2016, para 16 (see also for more detail Chapter V).

⁵⁵ European Court of Human Rights, *Rasul Jafarov v Azerbaijan*, (Application no. 69981/14), judgement of 17 March 2016, para 129 (underline *red.*).

53. This practice constitutes a clear violation of the Standards of Professional responsibility and statement of the essential duties and rights of prosecutors as adopted by the International Association of Prosecutors.⁵⁶ Notably article 4.2 of the IAP standards requires prosecutors to only proceed with criminal prosecution in a case ‘when a case is well-founded upon evidence reasonably believed to be reliable and admissible [and expects prosecutors] not [to] continue with a prosecution in the absence of such evidence’.⁵⁷

C. TORTURE AND ILL-TREATMENT OF PERSONS IN CUSTODY

54. A second issue that can be identified in the legal practice of the Azerbaijani prosecution services is the problem of the use of torture and ill-treatment of persons in custody in Azerbaijan and the use in court of “confessions” obtained without credible investigation of alleged torture and ill-treatment.

55. The use of torture and ill-treatment as a means of extracting confessions is a clear violation of Azerbaijan’s obligations under international law.⁵⁸ The use as evidence in criminal proceedings of confessions obtained through the use of ‘violence, threat, deception, torture or other cruel, inhuman or degrading acts’ is furthermore in breach of article 125.2.2 of the Azerbaijani Code of Criminal Procedure⁵⁹ and the UN Guidelines on the Role of Prosecutors.⁶⁰

56. As will be demonstrated, this practice of torture and ill-treatment of persons in custody in Azerbaijan and the use in court of “confessions” obtained without credible investigation of alleged torture and ill-treatment also constitutes a clear violation of several provisions of the Standards of Professional responsibility and statement of the essential duties and rights of prosecutors as adopted by the International Association of Prosecutors.⁶¹

57. In its most recent report regarding the situation in Azerbaijan, the UN Committee Against Torture (CAT) has recently stated that there are ‘numerous and persistent allegations that torture and ill-treatment are routinely used by law enforcement and investigative officials, or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings’.⁶²

⁵⁶ Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁵⁷ Article 4.2 (d) Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁵⁸ The right to freedom from torture including the prohibition of the use in any proceedings of statements made as a result of torture is enshrined in article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁵⁹ See also Committee against Torture: Concluding observations on the fourth periodic report of Azerbaijan, 27 January 2016, CAT/C/AZE/CO/4, para 18.

⁶⁰ Notably a prohibition of the use of evidence reasonably believed to have been obtained through recourse to unlawful methods that constitute a human rights violation, as well as the duty to investigate and prosecute human rights violations by public officials have been enshrined in Guidelines 16 and 15 of the UN Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁶¹ Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁶² Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan, CAT/C/AZE/CO/4, para 8.

58. The Council of Europe's Parliamentary Assembly has also explicitly recognized the issue of the use of 'torture and other forms of ill-treatment at police stations, during the investigation period and in penal institutions, as well as the impunity of perpetrators [as a matter of] major concern'.⁶³
59. The United Nations Working Group on Arbitrary Detention had reached a similar conclusion, condemning *i.a.* the 'large number of testimonies [...] about torture and ill treatment' of persons in custody in Azerbaijan.⁶⁴
60. Torture and ill-treatment have also been employed in politically-motivated cases against human rights defenders, as has been explicitly confirmed by the UN Committee which stated that 'a number of human rights defenders have been arbitrarily deprived of their liberty, subjected to ill-treatment and, in some cases, denied adequate medical treatment in retaliation for their professional activities. Among those human rights defenders are Leyla and Arif Yunus, Ilgar Mammadov, Intigam Aliyev, Mahamad Azizov, Rashadat Akhundov and Rashad Hassanov'.⁶⁵
61. As has also been described by the UN Committee Against Torture, there are furthermore 'numerous and consistent allegations that persons deprived of their liberty have been subjected to torture or ill-treatment for the purpose of compelling a confession, and that such confessions have subsequently been admitted as evidence in court'.⁶⁶
62. This practice constitutes a clear violation of the Standards of Professional responsibility and statement of the essential duties and rights of prosecutors as adopted by the International Association of Prosecutors.⁶⁷ Notably article 4.2 of the IAP Standards requires prosecutors to ensure 'that the investigating services respect legal precepts and fundamental human rights'.⁶⁸
63. The subsequent use of any 'evidence' obtained through the use of torture and/or ill-treatment by prosecutors in court also – as such – constitutes a violation of article 4.3 (e) and (f) of the IAP standards, which require more specifically that prosecutors 'examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained' and that they 'refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment'.
64. Finally, the failure of the Azerbaijani prosecution services to investigate complaints concerning the use of torture and ill-treatment by the Azerbaijani authorities is also not in line with article 4.3 (g) of the IAP

⁶³ Parliamentary Assembly of the Council of Europe Resolution 1917 (2013), 'The honouring of obligations and commitments by Azerbaijan', Text adopted by the Assembly on 23 January 2013 (6th Sitting), para 15.

⁶⁴ United Nations Office of the High Commissioner for Human Rights, 'Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16-25 May 2016)'. Available online via www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E#sthash.5qsnheiY.dpuf (last accessed 6-3-2018).

⁶⁵ Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan, CAT/C/AZE/CO/4, para 10.

⁶⁶ Committee against Torture: Concluding observations on the fourth periodic report of Azerbaijan, 27 January 2016, CAT/C/AZE/CO/4, para 18.

⁶⁷ See the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁶⁸ Article 4.2 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

standards, which requires prosecutors to ‘ensure that appropriate action is taken against those responsible for using such methods’.⁶⁹

65. In rather critical observations, the UN Committee Against Torture has already expressed its regret regarding the Azerbaijani ‘categorical’ denial of reports of arbitrary imprisonment and ill-treatment of human rights defenders, despite the existence of multiple ‘reports of the United Nations, other international organizations and human rights mechanisms indicating otherwise’.⁷⁰ According to the Committee, there are ‘strong’ indications that the allegations of torture are not investigated in a ‘prompt efficient and impartial manner’.⁷¹

D. FAILURE TO SAFEGUARD FUNDAMENTAL RIGHTS OF PERSONS IN CUSTODY

66. A third issue that can be identified in the legal practice of the Azerbaijani prosecution services and which raises questions with a view to IAP Standards concerns the failure to safeguard the fundamental rights of persons in custody in Azerbaijan. More specifically, focused attention will be devoted to the key role Azerbaijani prosecutors play in the denial of adequate access to legal representation and appropriate time for preparation of the legal defense and the excessive use of pre-trial detention and travel bans, also in cases where the factual context does not necessitate such intrusive legal measures.
67. The UN Committee Against Torture has recently expressed ‘serious concern’ at Azerbaijan’s failure to afford in practice ‘all persons deprived of their liberty with all fundamental legal safeguards from the very outset of the deprivation of liberty’.⁷² More specifically, the Committee was concerned about reports that ‘during the period immediately following deprivation of liberty detainees are frequently denied access to a lawyer of their choice and are not allowed to contact family members and that police officers forcibly extract confessions’.⁷³
68. Generally, accused persons in Azerbaijan experience many difficulties in their access to legal representation. There exists a continuous shortage of lawyers in Azerbaijan. According to the Council of Europe, Azerbaijan has ‘by far the lowest ratio of lawyers to head of population [in Europe]’.⁷⁴ The far-out

⁶⁹ Art 4.3 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁷⁰ Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan, CAT/C/AZE/CO/4, para 10. The UN Committee Against Torture expressed its concern more specifically about the fact that in the period of 2010-2015 ‘not a single individual was prosecuted despite the 334 complaints against officials of the prison system for torture or ill-treatment investigated by the Prison Service between 2009 and 2013, the 984 similar complaints received by the Ministry of Internal Affairs between 2010 and 2013 and the 678 similar complaints received by the Office of the Procurator General between 2010 and 2013’. See furthermore Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan, CAT/C/AZE/CO/4, para 8.

⁷¹ Committee against Torture: Concluding observations on the fourth periodic report of Azerbaijan, 27 January 2016, CAT/C/AZE/CO/4, para 8.

⁷² Committee against Torture: Concluding observations on the fourth periodic report of Azerbaijan, 27 January 2016, CAT/C/AZE/CO/4, para 12.

⁷³ Committee against Torture: Concluding observations on the fourth periodic report of Azerbaijan, 27 January 2016, CAT/C/AZE/CO/4, para 12.

⁷⁴ Azerbaijan reportedly has a lawyer-head of population ratio of 10:100 000, compared to a European average of 147:100 000. Notably the second lowest ratio is 37:100 000, in Bosnia and Herzegovina. See for more detail Parliamentary Assembly of the Council of Europe, ‘The Case for Drafting a European Convention on the Profession of Lawyer’, Report by the Committee on Legal Affairs and Human Rights of 15 December 2017, para 12.

majority of the limited lawyers that are available as a defense lawyer in criminal trials are furthermore reportedly pro-government and unwilling to represent human rights defenders in highly politicized cases.

69. State appointed duty solicitors often also do not carry out their jobs appropriately. The Baku office of the OSCE has observed critically for instance that in many cases ‘the state-appointed lawyers did not raise any motion during the trial, remaining passive throughout the court proceedings’.⁷⁵
70. Lawyers in Azerbaijan have all been selected by the so-called ‘Collegium of Advocates’ Qualification Commission’, which is – in the language of the International Bar Association – generally considered ‘to be strongly influenced by the government [...] [and] acting as an arm of government, frequently subjecting members involved in politically motivated trials to biased disciplinary proceedings resulting in disbarment’.⁷⁶
71. Human rights lawyers representing human rights defenders in politically charged cases are indeed often put under pressure and, in some cases, disbarred. This happened to well-known human rights lawyer Khalid Baghirov, for instance, who was disbarred in response to his (critical) statements before the court concerning the fairness of the trial of one of his clients, opposition leader Ilgar Mammadov.⁷⁷
72. **The Azerbaijani prosecution service not only fails to ensure accused persons’s access to legal representation but also plays a key role in the imposition of limitations to accused human rights defenders’ access to legal representation.** First of all, the decision to disbar lawyers representing clients in politicized criminal trials often occurs upon request of the prosecution services.
73. For instance, in November 2017, Azerbaijan’s first deputy prosecutor-general Rustam Usubov himself asked the Azerbaijani Bar Association to initiate the disbarment procedure against four lawyers, whom were all active in the legal representation of clients in what are generally considered to be politically-motivated cases.⁷⁸
74. One of these lawyers, Nemat Karimli, was reportedly accused of ‘circulating information that has confused the public’.⁷⁹ While the prosecution service did not provide any further explanatory information, the request most probably related to statements he made in relation to the particularly striking case of investigative journalist Afghan Mukhtarli, who was beaten up and abducted from his political exile in Georgia and was subsequently charged and convicted on the allegation of smuggling (see for more detail on the case of Mukhtarli Chapter V of the current report).

⁷⁵ Organization for Security and Cooperation in Europe – Office in Baku, Trial Monitoring Report: Azerbaijan (2011), p. 35.

⁷⁶ International Bar Association’s Human Rights Institute, Report to the [UN] Human Rights Committee, Azerbaijan Country Report Task Force, 11th Session, 7-31 March 2016”.

⁷⁷ See for instance The International Bar Association’s Human Rights Institute, ‘IBAHRI calls on Azerbaijani court to overturn disbarment of defence lawyer Khalid Bagirov’, 4 August 2015. Available online via <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=aedca0d9-30d5-4c68-ac47-7f4f03276ced> (last accessed 6-3-2018). His case was mentioned in Parliamentary Assembly of the Council of Europe, ‘The Case for Drafting a European Convention on the Profession of Lawyer’, Report by the Committee on Legal Affairs and Human Rights of 15 December 2017, para 11.

⁷⁸ The lawyers in question were Nemat Karimli, Asabali Mustafayev, Agil Layich and Fakhraddin Mehdiyev. See for more info Meydan TV, ‘Prosecutor General’s Office issues complaint against four lawyers’, 17 November 2017. Available online via: <https://www.meydan.tv/en/site/news/26173/> (last accessed 6-3-2018).

⁷⁹ Meydan TV, ‘Prosecutor General’s Office issues complaint against four lawyers’, 17 November 2017. Available online via: <https://www.meydan.tv/en/site/news/26173/> (last accessed 6-3-2018).

75. A second trend which can be discerned in politically-motivated cases against human rights defenders, journalists and opposition politicians is the tactics of the Azerbaijani prosecution service to summon the lawyer of the accused as a witness in the legal proceedings, which results in their removal from the case on the basis of a supposed conflict of interest.⁸⁰
76. A well-known case that can be mentioned in this context, is for instance the case against Azerbaijani human rights defender Leyla Yunus. Her lawyer, Javad Javadov, was summoned as a witness in her case following public statements in which he expressed criticism of the legal proceedings against his client during a hearing, stating *i.a.* that the allegations issued by the prosecution had no factual basis.⁸¹
77. Similarly, human rights defender Intigam Aliyev was deprived of three of his four lawyers, when they were all called upon as witness in his own criminal trial.⁸² The case of Intigam Aliyev will be discussed in more detail at the end of this report (see Chapter V).
78. The Committee on Legal Affairs and Human Rights of the Council of Europe's Parliamentary Assembly recently condemned the practice of the Azerbaijani prosecution services to summon lawyers as witnesses in its report from December 2017.⁸³
79. The complicity of the Azerbaijani prosecution service in the imposition of these constraints to the access to legal representation of criminally accused persons in Azerbaijan constitutes a clear violation of the Standards of Professional responsibility and statement of the essential duties and rights of prosecutors as adopted by the International Association of Prosecutors.⁸⁴
80. Notably article 4.3 (c) of the IAP standards requires prosecutors to 'safeguard the rights of the accused in co-operation with the court and other relevant agencies'.⁸⁵ Article 1 (f) and (h) of the IAP Standards furthermore requires prosecutors to 'always protect an accused person's right to a fair trial' and to 'respect, protect and uphold the universal concept of human dignity and human rights'.⁸⁶
81. The actions of the Azerbaijani prosecution services unfortunately result into the current Azerbaijani practice where accused persons are in many cases effectively denied access to legal representation. The Azerbaijani practice in this regard has already drawn criticism from the European Court of Human Rights, which has indeed found in several cases a violation of the right to fair trial and, more specifically,

⁸⁰ See also Human Rights Watch, 'World Report of 2016: Azerbaijan'. Available online via: <https://www.hrw.org/world-report/2016/country-chapters/azerbaijan> (last accessed 6-3-2018).

⁸¹ International Federation for Human Rights, 'Azerbaijan: Ongoing judicial harassments and deprivation of her lawyers against Ms. Leyla Yunus', 6 November 2014. Available online via: <https://www.fidh.org/en/issues/human-rights-defenders/azerbaijan-ongoing-judicial-harassments-and-deprivation-of-her> (last accessed 6-3-2018).

⁸² The lawyers in question were: Anar Qasymly, Alayif Hasanov and Fariz Namazly. See furthermore International Federation for Human Rights, 'Azerbaijan: Ongoing judicial harassments and deprivation of her lawyers against Ms. Leyla Yunus', 6 November 2014. Available online via: <https://www.fidh.org/en/issues/human-rights-defenders/azerbaijan-ongoing-judicial-harassments-and-deprivation-of-her> (last accessed 6-3-2018).

⁸³ Parliamentary Assembly of the Council of Europe, 'The Case for Drafting a European Convention on the Profession of Lawyer', Report by the Committee on Legal Affairs and Human Rights of 15 December 2017, para 11.

⁸⁴ Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁸⁵ Art 4.3 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁸⁶ Article 1 (f) and (h) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

the right to legal representation as enshrined in article 6 (3) (c) of the European Convention on Human Rights.⁸⁷

82. Another issue concerning the safeguarding of the rights of accused persons in Azerbaijan – which also raises questions with regard to the IAP standards – is the fact that accused persons are in many cases **not given appropriate time for the preparation** of their defense.
83. On the basis of extensive interviews with Azerbaijani lawyers in the field, Bychawska-Siniarska has demonstrated elsewhere how lawyers defending human rights defenders in politicized cases were only given ‘little time to prepare the defense’ with the accused often receiving their indictment only last minute before the planned hearings and with judges dismissing motions for delay for the purpose of proper preparation before the court cases.⁸⁸
84. This practice has also been recognized by the European Court of Human Rights, which – in the case of *Huseyn and others v. Azerbaijan* – criticized the fact that the applicants in question were not given proper access to the evidence produced by the prosecutorial services which resulted in ‘serious problems as to the adequacy of the time and facilities afforded to the defense for acquainting themselves with the investigation file in preparation for the applicants’ trial’ ultimately amounting to a violation of article 6 (3) (b) of the European Convention on Human Rights.⁸⁹
85. This also raises question with regard to article 4.3 (d) of the IAP standards, which explicitly requires prosecutors to ‘disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial’.⁹⁰
86. A final issue concerning the failure to safeguard the rights of accused persons in Azerbaijan – which again raises questions with a view to the IAP standards – is the excessive use of pre-trial detention and travel bans, also in cases where the factual context does not necessitate such intrusive legal measures.
87. Azerbaijani prosecutors generally justify their request for such restrictions to be imposed with a reference to the risk of the accused disrupting the course of the investigation or even ‘absconding from the investigation if [the accused would remain] at liberty’.⁹¹ However, as has also been pointed out by the European Court of Human Rights, the factual context often does not provide any reasonable justification for such restrictions to be imposed.
88. In the earlier mentioned case of Rasul Jafarov, for instance, the accused had handed all original documents of proof to the prosecution service and was also himself the subject of a travel ban. The

⁸⁷ See for instance European Court of Human Rights, *Huseyn and others v Azerbaijan* (Application no 35485/05, 45553/05, 35680/05 and 36085/05), Judgement of 26 July 2011, paras 171–173. See also European Court of Human Rights, *Asadbeyli and others v Azerbaijan* (Application no 3653/05, 14729/05, 20908/05, 26242/05, 36083/05 and 16519/06), Judgement of 11 December 2012, para 133.

⁸⁸ Bychawska-Siniarska, D., ‘The Functioning of the Judicial System in Azerbaijan and its impact on the Right to a Fair Trial of Human Rights Defenders’, Helsinki Foundation for Human Rights & Netherlands Helsinki Committee (2016), p. 42.

⁸⁹ European Court of Human Rights, *Huseyn and others v Azerbaijan* (Application no 35485/05, 45553/05, 35680/05 and 36085/05), Judgement of 26 July 2011, para 178.

⁹⁰ Article 4.3 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁹¹ See for instance European Court of Human Rights, *Rasul Jafarov v Azerbaijan*, (Application no. 69981/14), judgement of 17 March 2016, para 17.

prosecution services nevertheless requested a pre-trial detention period of three months and subsequently also – successfully – applied for an extension of another three months.⁹²

89. The Council of Europe’s Commissioner for Human Rights Nils Muižnieks has described the case of Rasul Jafarov as a ‘disturbing illustration’ of how the Azerbaijani authorities use pre-trial detention ‘as a means of silencing those expressing dissenting views and preventing them from providing information to international human rights bodies.’⁹³
90. The Council of Europe’s Parliamentary Assembly has furthermore recently expressed its concern about ‘allegations of the excessive use of pretrial detention by judges at the request of prosecutors, without a detailed examination of the grounds which could justify such detention, and problems in properly ensuring the rights of the defence’.⁹⁴
91. Prolonged pre-trial detention is only justifiable in ‘exceptional circumstances’ per article 5 of the European Convention on Human Rights. The excessive use of pre-trial detention – especially in cases where the factual situation does not warrant such intrusive measures to be imposed – is generally considered to ‘run against human rights’.⁹⁵
92. The Azerbaijani practice therefore also constitutes a violation of the IAP standards, article 1 (h) of which requires prosecutors to ‘respect, protect and uphold the universal concept of human dignity and human rights’.⁹⁶

E. CONCLUSION

93. This chapter has analysed the *de facto* legal practice as exercised by the prosecution services in Azerbaijan. Three main issues have been highlighted in particular, which are seemingly in violation of the IAP Standards.
94. First of all, the prosecution of human rights defenders and those voicing criticism of the Azerbaijani government on the basis of trumped-up charges, without supporting evidence constitutes a violation of the IAP standards, which explicitly require prosecutors only to proceed with criminal prosecution in cases when the ‘case is well-founded upon evidence reasonably believed to be reliable and admissible [and expects prosecutors] not [to] continue with a prosecution in the absence of such evidence’.⁹⁷

⁹² European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, para 22. Jafarov later also appealed before the Baku Court of Appeal, but the decision was again upheld. A later request in December 2014 was also dismissed before both the lower and higher courts on the same grounds (*e.g.* “had not ceased to exist”), see furthermore European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, paras 27-28.

⁹³ European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, para 106. See also the Council of Europe’s Commissioner for Human Rights, ‘Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights: Application No. 69981/14, Rasul JAFAROV v. Azerbaijan’, 30 March 2015, CommDH(2015)8.

⁹⁴ Parliamentary Assembly of the Council of Europe, Resolution 2185 (2017). ‘Azerbaijan’s Chairmanship of the Council of Europe: what follow-up on respect for human rights?’, Text adopted by the Assembly on 11 October 2017 (32nd Sitting).

⁹⁵ See for instance the Council of Europe’s Commissioner for Human Rights, ‘Excessive use of pre-trial detention runs against human rights’, 18 August 2011. Available online via: <https://www.coe.int/en/web/commissioner/-/excessive-use-of-pre-trial-detention-runs-against-human-righ-1?inheritRedirect=true> (last accessed 6-3-2018).

⁹⁶ Article 1 (h) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁹⁷ Article 4.2 (d) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

95. A second major issue that has been highlighted is the ‘routinely’ use of torture and ill-treatment of persons in custody in Azerbaijan in order to extract confessions and the subsequent use of evidence in court of such ‘confessions’. This constitutes a clear breach of several provisions of the IAP Standards, which require prosecutors to ensure ‘that the investigating services respect legal precepts and fundamental human rights’; to ‘examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained’; to ‘refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect’s human rights and particularly methods which constitute torture or cruel treatment’; and to ‘ensure that appropriate action is taken against those responsible for using such methods’.⁹⁸
96. The third and final issue that has been discussed in this Chapter is the Azerbaijani’s prosecutorial authorities’ failure to safeguard fundamental rights of accused persons. This constitutes a clear breach of several provisions of the IAP Standards, which require prosecutors *i.a.* to ‘safeguard the rights of the accused in co-operation with the court and other relevant agencies’; to ‘always protect an accused person’s right to a fair trial’ and to ‘respect, protect and uphold the universal concept of human dignity and human rights’.⁹⁹
97. In further support of the analysis of the current background report, the next Chapter provides an overview of relevant public statements, evaluations and conclusions by international organizations regarding the rule of law and the justice system in Azerbaijan.

⁹⁸ Art 4.2 and 4.3 (e), (f) and (g) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

⁹⁹ Article 4.3 and 1 (f) and (h) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

IV. STATEMENTS FROM INTERNATIONAL ORGANIZATIONS ON THE RULE OF LAW AND THE JUSTICE SYSTEM IN AZERBAIJAN

98. This Chapter provides a (non-exhaustive) overview of public statements, evaluations and conclusions by international organizations regarding the rule of law and the justice system in Azerbaijan. Generally, it can be stated that criticism from international observers regarding the human rights situation in Azerbaijan has become considerably stronger over recent years in response to the recent crackdown on the – already heavily restricted – civil society in Azerbaijan.
99. Sub section A highlights statements from different organs of the United Nations, including the High Commissioner for Human Rights, several Special Rapporteurs of the Human Rights Council and the Committees overseeing the implementation of the UN Covenant on Civil and Political Rights and the UN Convention against Torture.
100. Sub section B subsequently provides an overview of statements issued by organs of the Council of Europe, including the Strasbourg-based European Court of Human Rights, the Committee of Ministers and the Commissioner for Human Rights.
101. Sub section C continues with statements from the Organization for Security and Co-Operation in Europe (OSCE), highlighting in particular relevant statements from the OSCE's Representative on Freedom of the Media and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) Janez Lenarčič.
102. Finally, sub section D provides an overview of the most striking statements from organs of the European Union (EU), including the European Parliament and the EU Commission's European External Action Service.

A. UNITED NATIONS

103. In response to the Azerbaijani crackdown on individual human rights defenders and civil society at large, the **UN High Commissioner for Human Rights** reacted strongly, explicitly condemning 'the ongoing crackdown on civil society and independent voices in Azerbaijan [...] [and the] undue pressure, harassment and intimidation against journalists, human rights defenders and activists by State authorities'.¹⁰⁰ He furthermore 'urged the Government to rescind recent legislative amendments concerning the registration and financing of associations, which severely curtail the work of independent civil society organizations by restricting their access to domestic and foreign funding'.¹⁰¹
104. The Office of the High Commissioner for Human Rights of the UN furthermore released several critical statements on behalf of **UN Special Rapporteurs**. In 2015 a group of six UN Special Rapporteurs (UN SR) – including the UN SR on the situation of human rights defenders, the UN SR on the rights to freedom of

¹⁰⁰ United Nations Office of the High Commissioner for Human Rights, 'Zeid condemns civil society crackdown in Azerbaijan', 8 September 2015. Available online via: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E> (last accessed 5-3-2018).

¹⁰¹ Ibid.

peaceful assembly and of association; the UN SR on the freedom of opinion and expression and the UN SR on the independence of judges and lawyers – released a joint statement in response to a series of politically motivated arrests of human rights defenders, requesting *i.a.* that the Azerbaijani authorities ‘put an end immediately to all forms of persecution against human rights activists in the country’.¹⁰² They furthermore added that ‘[c]riminalization of those working for the promotion and protection of human rights in the country is deeply disconcerting’ [...] reiterating a call on the authorities they made one year ago “to reverse the trend of repression, criminalization and prosecution of human rights work in the country”.¹⁰³

105. The **UN Special Rapporteur on human rights defenders** Michel Forst furthermore stated that the ‘already challenging environment for NGOs has turned into a total crisis due to the 2013-2015 legislative amendments on civil society regulations’.¹⁰⁴ Following his visit to the country, he urged ‘the Government of Azerbaijan to stop criminalization of peaceful and legitimate activities by human rights defenders, release all detained defenders and rescind criminal and administrative sanctions against them and their families’, also adding that ‘[o]ver the last three years, the civil society of Azerbaijan has faced the worst situation since its independence [with] [...] dozens of NGOs, their leaders, employees and their families [subjected] to administrative and legal persecution, including the seizure of their assets and bank accounts, travel bans, enormous tax penalties and even imprisonment’.¹⁰⁵

106. The **United Nations Working Group on Arbitrary Detention** furthermore recently condemned the ‘large number of testimonies [...] about torture and ill treatment’ of persons in custody in Azerbaijan.¹⁰⁶ The Working group stated notably that ‘human rights defenders, journalists, political and religious leaders continue to be detained under criminal or administrative charges as a way to impair the exercise of their basic human rights and fundamental freedoms and to silence them. These practices constitute an abuse of authority and violate of the rule of law that Azerbaijan has agreed to comply with’.¹⁰⁷

107. The **UN Committee Against Torture** (CAT) furthermore condemned the reports of torture and ill-treatment in Azerbaijan, stating that ‘torture and ill-treatment are routinely used by law enforcement and investigative officials, or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings’.¹⁰⁸ The CAT expressed its concern regarding the fact that in the period of 2010-2015 ‘not a single individual was prosecuted despite the 334 complaints against

¹⁰² United Nations Office of the High Commissioner for Human Rights, “Deeply distressing” – UN experts condemn latest prison sentencing of rights defenders in Azerbaijan’, 20 August 2015. Available online via: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16337&LangID=E> (last accessed 6-3-2018).

¹⁰³ Ibid. See also the earlier statement from the UN Special Rapporteur on the situation of human rights defenders and the UN Special Rapporteur on the rights to freedom of association and peaceful assembly: United Nations Office of the High Commissioner for Human Rights, ‘UN experts urge Azerbaijan to recognize and enable the role of rights defenders in run up to elections’, 4 October 2013. Available online via: <http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13829&LangID=E> (last accessed 6-3-2018).

¹⁰⁴ United Nations Office of the High Commissioner for Human Rights, ‘UN human rights expert calls on Azerbaijan to rethink punitive approach to civil society’, 22 September 2016. Available online via: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20554> (last accessed 6-3-2018).

¹⁰⁵ Ibid.

¹⁰⁶ United Nations Office of the High Commissioner for Human Rights, ‘Working Group on Arbitrary Detention Statement upon the conclusion of its visit to Azerbaijan (16-25 May 2016)’. Available online via www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E#sthash.5qsnheiY.dpuf (last accessed 6-3-2018).

¹⁰⁷ Ibid.

¹⁰⁸ Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan, CAT/C/AZE/CO/4, para 8.

officials of the prison system for torture or ill-treatment investigated by the Prison Service between 2009 and 2013'.¹⁰⁹ In this context, the CAT also explicitly expressed its concern about 'the lack of independence of the judiciary vis-à-vis the executive branch and its susceptibility to political pressure'.¹¹⁰

108. In these critical observations, the CAT furthermore expressed its regret regarding the Azerbaijani 'categorical' denial of reports of arbitrary imprisonment and ill-treatment of human rights defenders: 'a number of human rights defenders have been arbitrarily deprived of their liberty, subjected to ill-treatment and, in some cases, denied adequate medical treatment in retaliation for their professional activities. Among those human rights defenders are Leyla and Arif Yunus, Ilgar Mammadov, Intigam Aliyev, Mahamad Azizov, Rashadat Akhundov and Rashad Hassanov. [...] The Committee regrets the State party's categorical position that all the above allegations are unfounded, despite the existence of reports of the United Nations, other international organizations and human rights mechanisms indicating otherwise'.¹¹¹

109. At the June 2015 session of the **UN Human Rights Council**, a group of 25 countries furthermore issued a joint statement in relation to the dire human rights situation in Azerbaijan, condemning *i.a.* the 'systematic silencing of critical voices' in the country and calling for the 'immediate and unconditional release' of politically motivated prisoners.¹¹²

110. In its conclusion on the fourth periodic report of Azerbaijan on the implementation of the Covenant on Civil and Political Rights,, the Human Rights Committee expressed its concern about 'consistent reports of torture and ill-treatment, including of journalists, human rights defenders and youth activists, that have reportedly led to death in several cases [while also condemning] 'reports of physical attacks, politically motivated criminal charges and other adverse repercussions, such as disbarment, against lawyers who make critical statements about State policies and State officials and against lawyers representing victims of torture, human rights defenders, activists and journalists'.¹¹³

B. COUNCIL OF EUROPE

111. The human rights situation in Azerbaijan has also drawn severe criticism from various bodies of the Council of Europe, notably the European Court of Human Rights, the Council of Europe's Human Rights Commissioner, the Council of Europe's Parliamentary Assembly and its Committee of Ministers.

112. The human rights violations have resulted in a considerable body of case law concerning human rights violations in Azerbaijan from the **European Court of Human Rights**. However, until today the

¹⁰⁹ Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan, CAT/C/AZE/CO/4, para 8.

¹¹⁰ *Ibid.*, para 14.

¹¹¹ *Ibid.*, para 10.

¹¹² UN Human Rights Council, 'Joint statement on the situation of human rights in Azerbaijan', Ambassador Patricia O'Brien, Permanent Representative of Ireland at the 29th session of the Human Rights Council (24 June 2015). Available online via:

<https://www.dfa.ie/media/dfa/alldfawebstemedial/ourrolesandpolicies/int-priorities/humanrights/HRC29---JC-human-rights-in-Azerbaijan.pdf> (last accessed 6-3-2018).

¹¹³ UN Human Rights Committee, Concluding observations on the fourth periodic report of Azerbaijan, CCPR/C/AZE/CO/4 16 November 2016 paras 18 and 28.

government of Azerbaijan continues to delay or refuses outright the implementation of many of the Court's judgements. Currently, a total of 126 judgements await execution, a majority of which relates to the violation of rights of civil society organizations and human rights defenders.¹¹⁴

113. In response to this failure to implement judgements of the European Court of Human Rights, the Council of Europe Secretary General Thorbjørn Jagland had already initiated a formal inquiry into Azerbaijan's non-execution of judgements in 2015.¹¹⁵ In October 2017, the Council of Europe's Committee of Ministers furthermore launched so-called infringement proceedings against Azerbaijan in relation to its failure to execute the judgement of the European Court of Human Rights against the continued imprisonment of opposition leader Ilgar Mammadov – the first time in the history of the Council of Europe that this procedure was used.¹¹⁶

114. Much of the case law concerning Azerbaijan concerns violations of freedom of expression or freedom of assembly and association. The European Court of Human Rights has found violations of the freedom of assembly and association for instance in relation to the dispersal of peaceful demonstrations, where its participants were arrested and sentenced to prison on the basis of judicial proceedings which were characterized by a lack of safeguards for a fair trial, including the principle of 'equality of arms', public trial and access to a lawyer.¹¹⁷

115. The case of *Rasul Jafarov v. Azerbaijan* – discussed in more detail in Chapter V of the current report – is particularly insightful in this regard. The Court explicitly stated that 'in recent years the legislative environment regarding the operation of non-governmental, non-commercial organisations, including the regulation of matters relating to their State registration, funding and reporting requirements, has grown increasingly harsh and restrictive [in Azerbaijan]'.¹¹⁸

116. As the court made clear, the prosecution tends to go even further than this already restrictive legislative framework, claiming that certain actions should be characterised as 'illegal commercial activity' even though no provision of the Criminal Code in Azerbaijan 'specifically criminalises' these actions.¹¹⁹ In the language of the European Court of Human Rights, 'the actual purpose of the impugned measures [in the case of Jafarov] was to silence and punish the applicant for his activities in the area of human rights'.¹²⁰

117. The **Council of Europe's Human Rights Commissioner (HRC) Nils Muižnieks** has also explicitly stated his concern about the 'limitations to freedom of expression, shrinking space for NGOs, and official

¹¹⁴ OMCT and IPHR, 'Submission to the Committee against Torture in relation to its examination of the fourth periodic Report of Azerbaijan', 26 October 2015. Available online via: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AZE/INT_CAT_NGO_AZE_22126_E.pdf (last accessed 6-3-2018).

¹¹⁵ Council of Europe's Secretary General, 'Secretary General launches inquiry into respect for human rights in Azerbaijan', 16 December 2015.

¹¹⁶ Council of Europe's Committee of Ministers, 'Committee of Ministers launches infringement proceedings against Azerbaijan', 5 December 2017.

¹¹⁷ See for instance European Court of Human Rights, *Babayev and Hasanov v. Azerbaijan* (Application no. 60262/11 69437/11 53662/13), judgement of 20 July 2017; *Mehtiyev and others v. Azerbaijan* (20589/13 and others), judgement of 6 April 2017; *Hajili and others v. Azerbaijan* (Application no. 44699/13 47040/13 65283/13), judgement of 29 June 2017; *Ibrahimov and others v. Azerbaijan* (69234/11 69252/11 69335/11), judgement of 11 February 2016.

¹¹⁸ European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, para 120.

¹¹⁹ *Ibid.*, para 125. In the case of Jafarov, this concerned the failure to register grants. In the language of the ECtHR: 'rather inexplicably, the prosecuting authority claimed that the alleged failure by the applicant to register the grants should result in characterisation of the use of those grants as illegal commercial ("entrepreneurial") activity'.

¹²⁰ *Ibid.*, para 162.

harassment of human rights defenders and their lawyers [in Azerbaijan]'.¹²¹ He has been particularly fierce in his criticism regarding the criminalization of human rights defenders in Azerbaijan, talking about an 'area of darkness' in which '[h]uman rights activists, journalists and national electoral observers have been muzzled using repressive legislation, jailed on trumped-up charges or forced to escape into exile'.¹²²

118. The Commissioner has condemned this development, stating *i.a.* that '[u]njustified and selective criminal prosecution of people expressing dissenting views, including journalists, bloggers and activists, continues unabated. This is unacceptable'.¹²³ In his intervention before the European Court of Human Rights in the case of *Rasul Jafarov v. Azerbaijan* (also discussed below), the Commissioner talks about a 'pattern of reprisals', stating *i.a.* that Jafarov's arrest and detention was 'part of a more general crackdown on human rights defenders in Azerbaijan, which had intensified over the summer of 2014. The prosecutions of human rights defenders and prominent journalists for their engagement in activities which should be perfectly legal in a well-functioning democracy constituted reprisals against those who had cooperated with the Council of Europe or other organisations and denounced human rights violations in the country'.¹²⁴

119. Regarding the freedom of expression in Azerbaijan, the HRC has 'expressed serious concerns about the apparent intensification of the practice of unjustified or selective criminal prosecution of journalists and others who express critical opinions, including bloggers and online activists'.¹²⁵ The Commissioner has deplored the fact that 'this trend is on the rise', pointing *i.a.* to 'consistent reports according to which these cases are based on charges which lack credibility and often follow critical reporting or posts on the Internet'.¹²⁶ From the perspective of freedom of expression, the Commissioner has furthermore condemned the practice of Azerbaijani courts to apply – in civil proceedings concerning defamation law suits – 'disproportionate damage awards', reiterating that 'a compensation award of a disproportionate amount may also contravene Article 10 of the Convention, which protects the right to freedom of expression'.¹²⁷

¹²¹ Council of Europe's Human Rights Commissioner, 'Azerbaijan should release all persons detained because of their views expressed or legitimate civic activity', 17 May 2017. Available online via: <https://www.coe.int/en/web/commissioner/-/azerbaijan-should-release-all-persons-detained-because-of-their-views-expressed-or-legitimate-civic-activity> (last accessed 6-3-2018). The Parliamentary Assembly of the Council of Europe has issued similar concerns, stating *i.a.* that '[t]he Assembly is alarmed by reports by human rights defenders and international NGOs, confirmed by the Council of Europe Commissioner for Human Rights, concerning the increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on alleged charges in relation to their work', see Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) 'The functioning of democratic institutions in Azerbaijan', Text adopted by the Assembly on 23 June 2015 (22nd Sitting).

¹²² Council of Europe's Human Rights Commissioner, 'Azerbaijan: an area of darkness', 28-10-2015. Available online via: <https://www.coe.int/en/web/commissioner/-/azerbaijan-an-area-of-darkness> (last accessed 6-3-2018).

¹²³ Council of Europe's Human Rights Commissioner, 'Observations on Azerbaijan: Freedom of expression, assembly and association deteriorating in Azerbaijan', 23 April 2014. Available online via <https://www.coe.int/en/web/commissioner/-/freedom-of-expression-assembly-and-association-deteriorating-in-azerbaijan> (last accessed 6-3-2018).

¹²⁴ European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, para 104.

¹²⁵ Council of Europe's Commissioner for Human Rights, 'Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property', 23 April 2014, CommDH(2014)10, p. 1.

¹²⁶ *Ibid.* p. 1.

¹²⁷ *Ibid.* p. 3. The Commissioner refers to the specific case of the *Azadliq* newspaper, which was ordered to pay a 32.000 AZN (approximately €32.000) fine from a defamation lawsuit, and as a result had its bank accounts frozen since 25 October 2013 since the newspaper was unable to pay it, seriously jeopardising the continued activities of the newspaper.

120. Regarding the role of the Azerbaijani courts in human rights violations in Azerbaijan, the Council of Europe's Commissioner for Human Rights has also condemned the common practice according to which human rights defenders and journalists – when prosecuted for trumped up charges, such as tax evasion or abuse of power – are put in pre-trial detention, stating that 'pre-trial detention must be seen as a measure of an exceptional nature, which should be applied only when all other options are judged to be insufficient'.¹²⁸ This call has also been reiterated by the Parliamentary Assembly of the Council of Europe.¹²⁹
121. In this context of abuse of arrest and pre-trial detention, the Commissioner also presented the case of *Rasul Jafarov v. Azerbaijan* as a 'disturbing illustration' of how the Azerbaijani authorities use pre-trial detention 'as a means of silencing those expressing dissenting views and preventing them from providing information to international human rights bodies'.¹³⁰
122. Regarding Freedom of Assembly and Association in Azerbaijan, the Commissioner has also 'expressed serious concerns about the amendments to the law on NGOs, the law on grants and the Code of Administrative Offenses adopted on 15 February 2013' and more recent amendments to these laws.¹³¹ The Commissioner has deplored the fact that these 2014 amendments 'introduce additional administrative requirements with regard to the registration of NGOs as legal entities, the receipt and use of grants by these NGOs and their reporting obligations to the government'.¹³² Similar to the situation in Russia, the legislative framework leaves 'excessive discretion' for its application, '[d]ue in particular to the very broad and vague wording of the majority of the provisions'.¹³³
123. In relation to Freedom of Assembly, the Commissioner has 'regularly expressed concerns', citing as 'most frequent problems [i.a.] the banning of demonstrations in central and easily accessible locations and the use of force to disperse the demonstrations which still go ahead, leading to arrests and, in some cases, harsh sentences'.¹³⁴ Finally, the Commissioner has highlighted as an 'issue cutting across the areas of concern [in Azerbaijan] the urgent need to take measures to ensure a genuinely independent and impartial review of cases relating to fundamental freedoms by the judiciary'.¹³⁵

¹²⁸ Council of Europe's Commissioner for Human Rights, 'Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property', 23 April 2014, CommDH(2014)10, p. 4. The Commissioner refers specifically to the case of Anar Mammadli, the Chairman of the Election Monitoring and Democracy Studies Center, who was arrested and sentenced to three months' pre-trial detention by the Nasimi District Court. His pre-trial detention was later further prolonged with another three months.

¹²⁹ The Parliamentary Assembly of the Council of Europe has stated recently on this topic that: 'Dubiously motivated criminal prosecutions and disproportionate sentences remain a concern. Fairness of trials, equality of arms and respect for the presumption of innocence are other major concerns. The Assembly is concerned about the use of pre-trial detention as a means of punishing individuals for criticising the government', see Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) 'The functioning of democratic institutions in Azerbaijan', Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 6.

¹³⁰ European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, para 106.

¹³¹ Council of Europe's Commissioner for Human Rights, 'Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property', 23 April 2014, CommDH(2014)10. p. 3.

¹³² *Ibid.*, p. 3.

¹³³ *Ibid.*, p. 3.

¹³⁴ *Ibid.*, p. 4.

¹³⁵ *Ibid.*, p. 4.

124. The **Parliamentary Assembly of the Council of Europe** (PACE) has also voiced heavy criticism of the role of the justice system in the increasing criminalization of human rights defenders in Azerbaijan.¹³⁶ In 2015, for instance, the PACE expressed its concern about the ‘lack of independence of the judiciary [...] in Azerbaijan, where the executive branch is alleged to continue to exert undue influence’.¹³⁷ The PACE continued: ‘[d]ubiously motivated criminal prosecutions and disproportionate sentences remain a concern. Fairness of trials, equality of arms and respect for the presumption of innocence are other major concerns. The Assembly is concerned about the use of pre-trial detention as a means of punishing individuals for criticising the government’.¹³⁸ The PACE has also criticized the composition of the ‘Judicial Legal Council’ in Azerbaijan and the system of lengthy probationary periods for judges.¹³⁹
125. Moreover, the PACE condemned the ‘crackdown on human rights in Azerbaijan where working conditions for NGOs and human rights defenders have significantly deteriorated and some prominent and recognised human rights defenders, civil society activists and journalists are behind bars’.¹⁴⁰ The use of the criminal law system to harass and detain those voicing criticism of the Azerbaijani government also arose criticism, with PACE ‘deplor[ing] the arbitrary application of criminal legislation to limit freedom of expression, in particular the reported recent use of different criminal laws against journalists and bloggers’.¹⁴¹
126. In October 2017, the PACE yet again fiercely criticized the authorities’ crackdown on critical voices in Azerbaijan. In these resolutions, the PACE proved ‘particularly worried by the cases [...] of torture and inhuman or degrading treatment during arrest, in police custody and in prisons, and the lack of effective investigations in this regard’.¹⁴² The PACE furthermore expressed its concern about ‘allegations of a systematic lack of independence of the judiciary vis-à-vis the executive and the arbitrary application of criminal law [...] [and its concern] about allegations of the excessive use of pretrial detention by judges at the request of prosecutors, without a detailed examination of the grounds which could justify such detention, and problems in properly ensuring the rights of the defence’.¹⁴³
127. In another resolution, the PACE criticised the Azerbaijani notion of so-called “prisoners of Facebook”, meaning ‘young people who go to prison for criticising the policy of the authorities on Facebook’.¹⁴⁴ More generally, the PACE has called upon the Azerbaijani authorities to ‘review the cases of the so-called “political prisoners”/”prisoners of conscience” detained on criminal charges following trials whose

¹³⁶ See Parliamentary Assembly of the Council of Europe Resolution 1917 (2013), ‘The honouring of obligations and commitments by Azerbaijan’, Text adopted by the Assembly on 23 January 2013 (6th Sitting), para 15. See furthermore Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) ‘The functioning of democratic institutions in Azerbaijan’, Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 11.5.

¹³⁷ Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) ‘The functioning of democratic institutions in Azerbaijan’, Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 6.

¹³⁸ *Ibid.*, para 6.

¹³⁹ *Ibid.*, para 5.

¹⁴⁰ *Ibid.*, para 8.

¹⁴¹ *Ibid.*, para 9.

¹⁴² Parliamentary Assembly of the Council of Europe, Resolution 2185 (2017). ‘Azerbaijan’s Chairmanship of the Council of Europe: what follow-up on respect for human rights?’, Text adopted by the Assembly on 11 October 2017 (32nd Sitting), para 5.

¹⁴³ *Ibid.*, para 7.

¹⁴⁴ Parliamentary Assembly of the Council of Europe, Resolution 2184 (2017), ‘The functioning of democratic institutions in Azerbaijan’, Text adopted by the Assembly on 11 October 2017 (32nd Sitting), para 6.

conformity with human rights standards has been called into question by the European Court of Human Rights, civil society and the international community, and [to] use all possible means to release those prisoners whose detention gives rise to justified doubts and legitimate concerns, in particular but not exclusively, Ilgar Mammadov, Ilkin Rustamzade, Mehman Huseynov, Afgan Mukhtarli, Said Dadashbayli, Fuad Gahramanli and Aziz Orujov'.¹⁴⁵

C. ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE

128. The Organization for Security and Co-operation in Europe (OSCE) has also voiced criticism of the human rights situation in Azerbaijan and, more specifically, the increasing criminalization of human rights defenders and investigative journalists in Azerbaijan in retaliation for their critical position vis-à-vis government policies.

129. The OSCE's **Representative on Freedom of the Media** Dunja Mijatović demanded already in 2014 – in response to the detention of Mehman Huseynov, discussed in more detail in Chapter V of this report – that 'the ongoing and increasing number of repressive actions against independent media and advocates of freedom of expression in Azerbaijan must stop'.¹⁴⁶ She emphasized that '[p]ractically all independent media representatives and media NGOs have been purposefully persecuted under various, often unfounded and disturbing charges', adding that she repeated her 'call on the authorities in Azerbaijan to end this hostile attitude against free media'.¹⁴⁷

130. Her successor as OSCE Representative on Freedom of the Media, Harlem Désir, recently expressed his concern regarding the criminal trial against the abducted investigative journalist in-exile Afghan Mukhtarli – discussed in more detail in Chapter V of the current report – stating that '[n]otwithstanding the seriousness of reports that Mukhtarli was subject to attack and abduction, the spurious charges brought against him in Azerbaijan and the lack of evidence for keeping him in lengthy custody is troubling'.¹⁴⁸

131. In response to the recent reports concerning the six year prison sentence awarded to Afghan Mukhtarli, the OSCE Representative furthermore stated that this judgement constituted a 'clear attack on free media', adding also that '[s]ilencing independent journalists can never be accepted. I hope that this verdict will be overturned on appeal'.¹⁴⁹

132. He also condemned reports about the suspension of the bank accounts of the investigative journalist Khadija Ismayilova, stating *i.a.* that 'this restrictive action, together with her unjust imprisonment and

¹⁴⁵ Parliamentary Assembly of the Council of Europe, Resolution 2184 (2017), 'The functioning of democratic institutions in Azerbaijan', Text adopted by the Assembly on 11 October 2017 (32nd Sitting), para 16.3.

¹⁴⁶ Organization for Security and cooperation in Europe, 'Increased repression of free media in Azerbaijan must stop, OSCE Representative says', 10 November 2014. Available online via: <https://www.osce.org/fom/126534> (last accessed 6-3-2018).

¹⁴⁷ *Ibid.*

¹⁴⁸ Organization for Security and cooperation in Europe, 'OSCE media freedom representative calls on Azerbaijan authorities to end restrictive measures detrimental to journalists' freedom and safety', 18 December 2017. Available online via: <http://www.osce.org/fom/363206> (last accessed 6-3-2018).

¹⁴⁹ Organization for Security and cooperation in Europe, 'OSCE media freedom representative Désir condemns jailing of investigative journalist Afgan Mukhtarli in Azerbaijan', 12 January 2018. Available online via: <https://www.osce.org/fom/366346> (last accessed 6-3-2018).

continued travel ban, is yet another step which seriously hinders the professional activity of the journalist'.¹⁵⁰

133. The then Director of the **OSCE Office for Democratic Institutions and Human Rights (ODIHR) Janez Lenarčič**, in 2014 condemned the 5.5 years prison sentence for Azerbaijani human rights defender Anar Mammadli – which will also be discussed in more detail in Chapter V of the current report – stating that the ruling in the case of Mammadli was ‘just the latest element in a campaign by the authorities in Azerbaijan to silence those working to ensure the protection of fundamental freedoms’.¹⁵¹
134. ODIHR Director Lenarčič stated furthermore that in the context of what he referred to as a ‘concerted campaign of harassment and intimidation of Anar Mammadli and his election monitoring organization by the authorities’ he considered it to be clear that ‘this ruling and others like it, are intended as a warning meant to silence others in Azerbaijan who would work to defend the very rights and freedoms that the country has committed itself to promote’.¹⁵²
135. The criticism by representatives of the OSCE of the human rights situation in Azerbaijan problematized relations between Azerbaijan and the OSCE, and in June 2015, the Azerbaijani authorities ordered the OSCE Office in Baku to shut down its activities in the country within one month time – without providing any official explanation.¹⁵³ The office in the past had played a role in a.o. trial monitoring. As has also been discussed in the previous chapter of this report, the OSCE Office in Baku has been critical in its observation of criminal trials, stating i.a. that state-appointed lawyers did not carry out their work in many politically-motivated cases: ‘state-appointed lawyers did not raise any motion during the trial, remaining passive throughout the court proceedings’.¹⁵⁴

D. EUROPEAN UNION

136. The European Union has also voiced criticism regarding the human rights situation in Azerbaijan and, more specifically, concerning the increasing criminalization of human rights defenders and investigative journalists in retaliation for their critical positions vis-à-vis Azerbaijani government policies.
137. Most recently, the European Parliament issued a resolution in condemnation of the abduction of investigative journalist Afghan Mukhtarli in which it described the ‘overall human rights situation in Azerbaijan over the last few years [as] a matter of serious concern, with continued intimidation and repression, the practice of persecution, reported torture, travel bans and restrictions on freedom of

¹⁵⁰ Organization for Security and cooperation in Europe, ‘OSCE media freedom representative calls on Azerbaijan authorities to end restrictive measures detrimental to journalists’ freedom and safety’, 18 December 2017. Available online via: <http://www.osce.org/fom/363206> (last accessed 6-3-2018).

¹⁵¹ Organization for Security and cooperation in Europe, ‘OSCE/ODIHR Director condemns sentencing of Azerbaijani human rights defender’, 27 May 2014. Available online via: <https://www.osce.org/odihr/119174> (last accessed 6-3-2018).

¹⁵² Ibid.

¹⁵³ Radio Free Europe/Radio Liberty, ‘Azerbaijan Orders OSCE To Close Baku Office’, 5 June 2015. Available online via: <https://www.rferl.org/a/27055923.html> (last accessed 6-3-2018).

¹⁵⁴ Bychawska-Siniarska, D., ‘The Functioning of the Judicial System in Azerbaijan and its impact on the Right to a Fair Trial of Human Rights Defenders’, Helsinki Foundation for Human Rights & Netherlands Helsinki Committee (2016), p. 40. Refs to OSCE, Office in Baku, Trial Monitoring Report (2011) 35.

movement of NGO leaders, human rights defenders, members of the opposition, journalists and other civil society representatives'.¹⁵⁵

138. In this resolution, the European Parliament '[s]trongly condemn[ed] the abduction of Afgan Mukhtarli in Tbilisi and his subsequent arbitrary detention in Baku', adding that it 'considers this a serious violation of human rights and condemns this grave act of breach of law'.¹⁵⁶ The Parliament furthermore strongly condemned 'the prosecution of Afgan Mukhtarli following bogus charges and reiterates that he is trailed for his work as an independent journalist'.¹⁵⁷

139. The European Parliament furthermore reiterated its 'urgent call on the Azerbaijani authorities to end the practices of selective criminal prosecution and imprisonment of journalists, human rights defenders and others who criticise the government, and to ensure that all persons detained, including journalists and political and civil society activists, enjoy full due process rights and are covered by fair trial norms'.¹⁵⁸

140. More specifically, the European Parliament called for 'the immediate and unconditional release from jail of all political prisoners, including journalists, human rights defenders and other civil society activists, namely Afgan Mukhtarli, Ilkin Rustamzadeh, Rashad Ramazanov, Seymur Hazi, Giyas Ibrahimov, Mehman Huseynov, Bayram Mammadov, Ilgar Mammadov, Araz Guliyev, Tofiq Hasanli, Ilgiz Qahramanov, Afgan Sadygov and others, including, but not limited to, those covered by the relevant judgments of the European Court of Human Rights (ECHR), and calls for all charges against them to be dropped, and for the full restoration of their political and civil rights, also extended to previously imprisoned and since released political prisoners such as Intigam Aliyev, Khadija Ismayilova and others'.¹⁵⁹

141. In earlier resolutions the Parliament had already expressed its concern about the case against opposition-leader Ilgar Mammadov¹⁶⁰ and – more generally – about the persecution of human rights defenders in Azerbaijan.¹⁶¹ In the latter resolution, the parliament stated for instance that 'in the last few years the general human rights climate in Azerbaijan has been deteriorating, with a major escalation of government repression, pressure and intimidation directed at NGOs, civil society activists, journalists and human rights defenders taking place in recent months'.¹⁶²

142. The European Parliament furthermore condemned the fact that 'there has been an effective ban on peaceful protesters demonstrating in central Baku since 2006, and new harsh fines and longer periods of administrative detention were recently introduced for those who organise or participate in unauthorised public gatherings'.¹⁶³

¹⁵⁵ European Parliament resolution of 15 June 2017 on the case of Azerbaijani journalist Afgan Mukhtarli (2017/2722(RSP)), Consideration H.

¹⁵⁶ *Ibid.*, para 1

¹⁵⁷ *Ibid.*, para 5

¹⁵⁸ *Ibid.*, para 11.

¹⁵⁹ *Ibid.*, para 9.

¹⁶⁰ European Parliament resolution of 13 June 2013 on Azerbaijan: the case of Ilgar Mammadov (2013/2668(RSP)).

¹⁶¹ European Parliament resolution of 18 September 2014 on the persecution of human rights defenders in Azerbaijan (2014/2832(RSP)).

¹⁶² *Ibid.*, Consideration A.

¹⁶³ *Ibid.*, Consideration K.

143. The **High Representative of the Union for Foreign Affairs and Security Policy** (HR/VP) has also issued several statements in relation to specific criminal cases against Azerbaijani human rights defenders, including i.a. the cases concerning Rasul Jafarov and Afgan Mukhtarli.¹⁶⁴ In January 2018, the HR/VP stated for instance that the abduction, arrest and subsequent six-year prison sentence ‘poses serious questions as regards the exercise of fundamental rights including the freedom of expression and media and due process of law in Azerbaijan’.¹⁶⁵
144. The HR/VP also condemned the two-year prison sentence in the case against blogger and journalist Mehman Huseynov – discussed in more detail in Chapter V of the current report – stating i.a. that his sentence appeared ‘disproportionate to the alleged crime’ and that ‘[r]eports of his irregular arrest, alleged ill-treatment, and irregularities in the subsequent court proceeding that ended in his conviction are of equally serious concern and should be immediately investigated. Mr Huseynov should be a witness in a credible and independent investigation of these allegations, seeking accountability for the perpetrators, as appropriate, not in jail’.¹⁶⁶
145. In the context of the OSCE Permanent Council, the EU issued a joint statement on the situation of human rights and civil society in Azerbaijan, in which it expressed its deep concern about the ‘continuing deterioration of the situation of human rights and civil society in Azerbaijan’ naming explicitly the criminal cases against human rights defenders Leyla Yunus, Rasul Jafarov and Intigam Aliyev in this context.¹⁶⁷ The EU expressed its concern that these cases ‘add to the impression that the authorities are systematically restricting the space for public discourse and civil society in Azerbaijan’.¹⁶⁸
146. The next Chapter V of the current report will discuss in more detail a selection of these criminal cases against human rights defenders in Azerbaijan.

¹⁶⁴ See for instance the statement of 6 August 2014 by the spokesperson of the VP/HR on the arrest of Rasul Jafarov.

¹⁶⁵ EU Commission – EEAS, ‘Statement by the Spokesperson on the sentencing of journalist Afgan Mukhtarli in Azerbaijan’, 14 January 2018. Available online via: https://eeas.europa.eu/headquarters/headquarters-homepage/38212/statement-spokesperson-sentencing-journalist-afgan-mukhtarli-azerbaijan_en (last accessed 6-3-2018).

¹⁶⁶ EU Commission – EEAS, ‘Statement on the sentencing of Mehman Huseynov in Azerbaijan’, 7-3-2018. Available online via: https://eeas.europa.eu/headquarters/headquartershomepage_en/22074/Statement%20on%20the%20sentencing%20of%20Mehman%20Huseynov%20in%20Azerbaijan (last accessed 6-3-2018).

¹⁶⁷ EU Commission – EEAS, ‘EU Statement on the situation of human rights and civil society in Azerbaijan at the OSCE Permanent Council Nr 1013 in Vienna’, 14 August 2014. Available online via: <https://www.osce.org/pc/122733?download=true> (last accessed 6-3-2018).

¹⁶⁸ Ibid.

V. IN BRIEF: SIX CASES OF HUMAN RIGHTS DEFENDERS

147. This section provides an overview of six prominent cases of human rights defenders, where the Azerbaijani judiciary and prosecution services played a decisive role in the restriction of their working space and even contributed to the obstruction of their individual human rights. These cases demonstrate – *pars pro toto* – how prosecutors play an instrumental role for the Azerbaijani governmental authorities in the execution of repressive policies towards human rights defenders and civil society at large.

A. AFGHAN MUKHTARLI

148. Afghan Mukhtarli is a well-known Azerbaijani investigative journalist, who has worked from Tbilisi (Georgia) where he lived in exile from 2015 onwards. As a journalist, he reported critically on the Azerbaijani regime, focusing specifically on the President's families' financial ties.¹⁶⁹ His last publication was titled '*Politically Motivated Kidnappings in Azerbaijan: a Trend in the Making?*'¹⁷⁰

149. Unfortunately – ironically – Afghan Mukhtarli was subsequently kidnapped himself in Tbilisi and transported to Azerbaijan on 29 May 2017, where he was charged with use of force against a government representative, illegal border crossing and smuggling. Mukhtarli was kept in pre-trial detention, despite multiple requests to change his arrest into house arrest.

150. As a political refugee from Azerbaijan, Mukhtarli did not plan to come to Azerbaijan, nor was he carrying his passport at the time when he allegedly tried to 'illegally cross the border'. Instead, as Mukhtarli later reported, he was beaten up and abducted by three men in plain clothes in front of his house in Tbilisi and subsequently transported by car to a military base in Azerbaijan.¹⁷¹

151. According to Mukhtarli, his abductors subsequently planted 10.000 Euro in his pockets only to claim later that he would have tried to smuggle this amount of money into Azerbaijan. The accusations were generally considered to be politically motivated, with strong statements from the US State Department,¹⁷² the EU¹⁷³ and the OSCE's Representative on Freedom of the Media, Harlem Desir.¹⁷⁴

¹⁶⁹ See for instance Meydan TV, 'Aliyevs Profit While Other Banks Suffer', 1-8-2017. Available online via: <https://www.meydan.tv/en/site/politics/24442/> (last accessed 6-3-2018)

¹⁷⁰ Meydan TV, 'Politically Motivated Kidnappings in Azerbaijan: a Trend in the Making?', 7 June 2017. Available online via: <https://www.meydan.tv/en/site/society/23404/> (last accessed 6-3-2018).

¹⁷¹ Meydan TV, 'Afgan Mukhtarli: I was arrested on orders from Ilham Aliyev', 15 December 2017. Available online via: <https://www.meydan.tv/en/site/news/26559/> (last accessed 6-3-2018).

¹⁷² See for the statement of the US State Department condemning Mukhtarli's abduction: United States of America – State Department, 'Statement on the Abduction and Arrest of Afgan Mukhtarli', 3-6-2017. Available online via: <https://www.state.gov/r/pa/prs/ps/2017/06/271551.htm> (last accessed 6-3-2018).

¹⁷³ See for instance European Parliament resolution of 15 June 2017 on the case of Azerbaijani journalist Afgan Mukhtarli (2017/2722(RSP)).

¹⁷⁴ Organization for Security and cooperation in Europe, 'OSCE media freedom representative calls on Azerbaijan authorities to end restrictive measures detrimental to journalists' freedom and safety', 18 December 2017. Available online via: <http://www.osce.org/fom/363206> (last accessed 6-3-2018) and the Organization for Security and cooperation in Europe, 'OSCE media freedom representative concludes country visit to Georgia, addresses reforms and developments affecting media freedom', 14 October 2017. Available online via: www.osce.org/fom/347741 (last accessed 6-3-2018).

152. Afghan Mukhtarli's criminal trial was held in the Balakan District Court. Press reporters were denied entry to the court room, due to a 'lack of space'. The court – represented by judge Humbat Salimov – dismissed the defense's requests complaining that the limited available space was filled up with persons who were not affiliated with the defendant and were also not reporting on the criminal trial.¹⁷⁵ Those persons that were able to attend the trial, had their names recorded, despite formal objections from the defense.¹⁷⁶
153. According to Mukhtarli's legal representation, the renowned Azerbaijani human rights advocate Elchin Sadigov, the criminal trial was held in apparent breach of several procedural laws: 'Witness statements often contradicted each other and none of the interrogation documents had Mukhtarli's signature. Prosecutors offered no explanation for that'.¹⁷⁷ Reports furthermore criticized the fact that the individual "witnesses" were able to hear each other statements and the defense team claimed that the prosecutor was seen instructing the witnesses during a break at the time of the criminal trial.¹⁷⁸
154. The court furthermore dismissed all defense motions that would have allowed Mukhtarli to prove his innocence. A striking example is for instance the court's dismissal of the motion to include in the case file information and statements from the official websites of the Georgian Ministry of Internal Affairs and the Prosecutor General's office of Georgia which could have stated explicitly that 'Afghan Mukhtarli was abducted from Georgia and brought to Azerbaijan'.¹⁷⁹
155. Despite fierce (international) criticism of the criminal trial against Afghan Mukhtarli and notwithstanding contradicting statements issued by the 'witnesses' brought forward by the prosecution, the court sentenced Mukhtarli to six years of prison. The court did not pay any attention to the fact that Mukhtarli had no previous criminal record and to the unlikelihood that a political refugee from Azerbaijan, such as Mukhtarli, would try to cross the border illegally, smuggling 10,000 euro and leaving not only his passport, but also his wife and two children behind in Tbilisi (Georgia).
156. His sentence has been condemned in strong terms *in absentia* in statements issued by the EU Commission¹⁸⁰ and the OSCE Representative on Freedom of the Media Harlem Désir as 'based on spurious charges' constituting a 'clear attack on free media'.¹⁸¹ International human rights organizations have furthermore

¹⁷⁵ Meydan TV, 'Afgan Mukhtarli: I was arrested on orders from Ilham Aliyev', 15 December 2017. Available online via: <https://www.meydan.tv/en/site/news/26559/> (last accessed 6-3-2018).

¹⁷⁶ Meydan TV, 'Conflicting statements during trial of Afgan Mukhtarli', 14 January 2018. Available online via: <https://www.meydan.tv/en/site/news/26780/> (last accessed 6-3-2018).

¹⁷⁷ OCCRP, 'Azerbaijan Sentences Investigative Reporter to Six Years', 12 January 2018. Available online via: <https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/7489-azerbaijan-sentences-investigative-reporter-to-six-years> (last accessed 6-3-2018).

¹⁷⁸ Meydan TV, 'Conflicting statements during trial of Afgan Mukhtarli', 14 January 2018. Available online via: <https://www.meydan.tv/en/site/news/26780/> (last accessed 6-3-2018). See also Meydan TV, 'Афган Мухтарлы: Посадите нас, будут писать другие', 12 January 2018. Available online via: <https://d9mc3ts4czbpr.cloudfront.net/ru/site/news/26877/> (last accessed 6-3-2018).

¹⁷⁹ Meydan TV, 'Афган Мухтарлы: Посадите нас, будут писать другие', 12 January 2018. Available online via: <https://d9mc3ts4czbpr.cloudfront.net/ru/site/news/26877/> (last accessed 6-3-2018).

¹⁸⁰ EU Commission – EEAS, 'Statement by the Spokesperson on the sentencing of journalist Afgan Mukhtarli in Azerbaijan', 14 January 2018. Available online via: https://eeas.europa.eu/headquarters/headquarters-homepage/38212/statement-spokesperson-sentencing-journalist-afgan-mukhtari-azerbaijan_en (last accessed 6-3-2018).

¹⁸¹ Organization for Security and Cooperation in Europe, 'OSCE media freedom representative Désir condemns jailing of investigative journalist Afgan Mukhtarli in Azerbaijan', 12 January 2018. Available online via: <https://www.osce.org/fom/366346> (last accessed 6-3-2018).

named Afghan Mukhtarli a ‘prisoner of conscience’.¹⁸² The US State Department finally stated that the accusations against Mukhtarli were ‘widely considered to be politically motivated’, while also urging ‘government of Azerbaijan to release Mr. Mukhtarli and all those incarcerated for exercising their fundamental freedoms’.¹⁸³

157. At the time of writing, Afghan Mukhtarli remains incarcerated in Azerbaijan awaiting his appeal case. His wife and children currently reside somewhere in Europe.

B. RASUL JAFAROV

158. Rasul Jafarov is a well-known human rights defender and lawyer from Azerbaijan. As a co-founder and chair of the independent group the Human Rights Club, he organized the so-called ‘Sing for Democracy Campaign’ in the context of the Eurovision Song Contest held in Baku in 2012.¹⁸⁴ Jafarov has also acted as a board member of the Republican Alternative Civic Movement (REAL)¹⁸⁵ and has been actively involved with both the Council of Europe and the United Nations on the human rights situation in Azerbaijan.¹⁸⁶ In 2014, he was awarded the Andrei Sakharov Freedom Award by the Norwegian Helsinki Committee and was also nominated for the Dutch ‘Human Rights Tulip’.¹⁸⁷

159. On August 2nd of that same year (2014), Mr Jafarov was arrested by the Azerbaijani authorities and subsequently charged for illegal entrepreneurship, large-scale tax evasion and abuse of power.¹⁸⁸ In short, the Azerbaijani authorities accused him *i.a.* of earning money from (foreign) grants through an unregistered organization. Since its establishment in 2010, Human Rights Club had continuously attempted to formally register as a legal entity under Azerbaijani domestic law and its failure to do so has also resulted in another (currently pending) application before the ECtHR.¹⁸⁹

160. Jafarov’s case demonstrates how both lower and higher Azerbaijani courts have assumed a role of almost automatic approval of requests issued by the prosecutor, even in cases where the prosecution’s charges are generally considered bogus and politically-motivated. The Nasimi District Court approved the prosecution’s request for a pre-trial detention period of three months on the same day as his arrest,

¹⁸² See for instance Amnesty International, ‘Sentenced journalist latest victim of Azerbaijan’s ‘repressive apparatus of fear’, 12 January 2018. Available online via: <https://www.amnesty.org.uk/press-releases/sentenced-journalist-latest-victim-azerbajans-repressive-apparatus-fear> (last accessed 6-3-2018).

¹⁸³ United States of America – State Department, ‘On the Sentencing of Afgan Mukhtarli’, 12 January 2018. Available online via: <https://www.state.gov/r/pa/prs/ps/2018/01/277441.htm> (last accessed 6-3-2018).

¹⁸⁴ See for more information on Human Rights Club and their initiatives: <https://www.humanrightsclub.net/en/#about> (last accessed 22-1-2018).

¹⁸⁵ European Court of Human Rights, Rasul Jafarov v. Azerbaijan (Application no. 69981/14). Judgement of 17 March 2016, para 6.

¹⁸⁶ European Court of Human Rights, Rasul Jafarov v. Azerbaijan (Application no. 69981/14). Judgement of 17 March 2016, para 7.

¹⁸⁷ See for more information Ministry of Foreign Affairs, ‘About the Award’. Available online via: <https://www.humanrightstulip.nl/about-the-award> (last accessed 22-1-2018).

¹⁸⁸ Mr Jafarov was formally charged under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the [Azerbaijani] Criminal Code’. See European Court of Human Rights, Rasul Jafarov v. Azerbaijan (Application no. 69981/14). Judgement of 17 March 2016, para 16

¹⁸⁹ See European Court of Human Rights, Rasul Jafarov and others v. Azerbaijan (Application no. 27309/14) lodged on 18 March 2014.

a decision upheld by the Baku Court of Appeal which – in the language of the European Court of Human Rights – did not even address ‘any of the applicant’s arguments’.¹⁹⁰

161. The defense’s requests to substitute pre-trial detention with house arrest or release on bail were also dismissed without further argumentation, as was his appeal against the Nasimi District Court’s decision to prolong his pre-trial detention with another three months.¹⁹¹ Having been detained for almost six months without criminal trial, Jafarov was finally tried before the Baku Court of Serious Crimes from January 2015 onwards and ultimately convicted of all charges with a sentence of 6.5 years’ imprisonment and *i.a.* a deprivation of ‘the right to engage in entrepreneurial activity for a period of three years’.¹⁹²

162. The European Court of Human Rights condemned the legal proceedings in Jafarov’s case in strong terms, stating *i.a.* that the court had gone along in accusations regarding the alleged ‘illegal commercial activity’ even though it was clear that no provision of the Criminal Code in Azerbaijan ‘specifically criminalises’ the actions described.¹⁹³ In the language of the ECtHR, ‘the actual purpose of the impugned measures [in the case of Jafarov] was to silence and punish the applicant for his activities in the area of human rights’.¹⁹⁴

163. Referring to the abuse of arrest and pre-trial detention in the case of Rasul Jafarov, the Council of Europe’s Commissioner for Human Rights Nils Muižnieks has described his case as a ‘disturbing illustration’ of how the Azerbaijani authorities use pre-trial detention ‘as a means of silencing those expressing dissenting views and preventing them from providing information to international human rights bodies’.¹⁹⁵

164. The Parliamentary Assembly of the Council of Europe also explicitly mentioned him as an example of the ‘systemic harassment of those who are critical of the government’ and the consistent reports of the ‘increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on alleged charges in relation to their work’.¹⁹⁶

165. Trial reports furthermore observed that the criminal trial included statements from persons who were represented as witnesses by the prosecution, while the persons in question stated themselves that they ‘did not feel victimised by the defendant and that they have no claims against him’.¹⁹⁷ The criminal trial

¹⁹⁰ European Court of Human Rights, *Rasul Jafarov v. Azerbaijan* (Application no. 69981/14), judgement of 17 March 2016, para 20 (italic red.). See also *ibid.*, paras 17 and 19.

¹⁹¹ *Ibid.*, para 22. Jafarov later also appealed before the Baku Court of Appeal, but the decision was again upheld. A later request in December 2014 was also dismissed before both the lower and higher courts on the same grounds (e.g. “had not ceased to exist”), see furthermore *ibid.*, paras 27-28.

¹⁹² *Ibid.*, para 31.

¹⁹³ In the case of Jafarov, this concerned the failure to register grants. In the language of the European Court of Human Rights: ‘rather inexplicably, the prosecuting authority claimed that the alleged failure by the applicant to register the grants should result in characterisation of the use of those grants as illegal commercial (“entrepreneurial”) activity’, see *ibid.*, para 125.

¹⁹⁴ *Ibid.*, para 162.

¹⁹⁵ *Ibid.*, para 106. See also Council of Europe’s Commissioner for Human Rights, ‘Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights: Application No. 69981/14, *Rasul JAFAROV v. Azerbaijan*’, 30 March 2015, CommDH(2015)8.

¹⁹⁶ Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) ‘The functioning of democratic institutions in Azerbaijan’, Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 10.

¹⁹⁷ Netherlands Helsinki Committee, ‘Fair trial for Azerbaijan’s prisoners of conscience’, 20 March 2015. Available online via: <https://www.nhc.nl/fair-trial-azerbaijans-prisoners-conscience/> (last accessed 6-3-2018).

was furthermore characterized by many of the ‘typical’ procedural violations, such as the use of a metal cage to detain the defendant during his criminal trial - amounting to an inhuman and degrading treatment – and a lack of equality of arms between the prosecution and the defendant, where the latter was given scarce opportunity to challenge the evidence provided by the prosecution.

166. Rasul Jafarov was released from prison – together with 10 other prisoners of conscience – on 17 March 2016 as the result of a Presidential Pardon.¹⁹⁸ The Baku Court of Appeals converted his six year sentence into a five year suspended sentence. While Jafarov was released, he has not been formally acquitted and continues to have a criminal record as the consequence of this flawed criminal trial.

C. INTIGAM ALIYEV

167. Intigam Aliyev is a human rights lawyer based in Azerbaijan, who has been active as the head of the Legal Education Society, focused on the ‘provision of free legal assistance to low-income populations; legal support and guidance to mass media and non-governmental organizations’.¹⁹⁹ As a human rights lawyer, Intigam Aliyev has represented applicants in more than 200 cases before the European Court of Human Rights. In 2012, he was awarded the renowned *Homo Homini* Award by the Czech human rights organization People in Need. In October 2014, Mr. Aliyev – together with other prominent Azerbaijani human rights activists – was awarded the Andrei Sakharov Freedom Award by the Norwegian Helsinki Committee.²⁰⁰

168. The Council of Europe’s Commissioner for Human Rights Nils Muižnieks has described Intigam Aliyev as ‘one of Azerbaijan’s most renowned human rights lawyers and a longstanding partner of the Council of Europe [who] has provided the Council of Europe with valuable information about the human rights situation in Azerbaijan over the past several years’.²⁰¹

169. On 8 August 2015, Aliyev was arrested and – similar to the case of Rasul Jafarov – subsequently charged with *i.a.* tax evasion and illegal business activities. Despite (or rather: because of) significant interest from international observers, the criminal trials were held in small courtrooms with limited space, preventing international and domestic journalists and human rights activists but also staff of foreign embassies to attend the judicial proceedings. Similar to Rasul Jafarov, Intigam Aliyev was furthermore

¹⁹⁸ See for more information: Amnesty International, ‘Azerbaijan: Release of 10 prisoners of conscience is a glimmer of hope for those still behind bars, 17 March 2016. Available online via: <https://www.amnesty.org/en/press-releases/2016/03/azerbajian-pocs-release/> (last accessed 6-3-2018).

¹⁹⁹ PILNet, ‘Azerbaijan: Legal Education Society’, 10 July 2014. Available online via: <http://www.pilnet.org/azerbajian.html> (last accessed 6-3-2018).

²⁰⁰ Netherlands Helsinki Committee, ‘Fair trial for Azerbaijan’s prisoners of conscience’, 20 March 2015. Available online via: <https://www.nhc.nl/fair-trial-azerbajians-prisoners-conscience/> (last accessed 6-3-2018).

²⁰¹ Council of Europe’s Commissioner for Human Rights, ‘Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Application No. 68762/14: Intigam ALIYEV v. Azerbaijan’, 16 March 2015, CommDH(2015)6, para 27.

placed in a metal cage during his hearing, preventing him from effective communication with his legal representation.²⁰²

170. Trial reports of Aliyev's criminal trial unfortunately demonstrate a clear bias from the court in favour of the prosecution and raise critical questions regarding the equality of arms during the proceedings. The court rejected the defendant's request to have his pre-trial detention converted into house arrest or bail and dismissed 'all motions of the defence with regard to the evidence and the merits of the case'.²⁰³ The defendant was for instance not even allowed to solicit a bank statement listing the financial operations on the NGO's bank account, nor was he allowed to receive a list of registered grants from the Ministry of Justice – thus effectively preventing him to prove the legality of his actions.²⁰⁴ The court ultimately sentenced Intigam Aliyev to 7.5 years of imprisonment.
171. The Council of Europe's Commissioner for Human Rights Nils Muižnieks described Intigam Aliyev's case as a 'a disturbing illustration of this pattern of reprisals against those who co-operate with international institutions, including the Council of Europe, to address human rights shortcomings in Azerbaijan' condemning the arrest and detention of Aliyev as 'an attempt to silence his efforts to report on human rights violations and aims to prevent him from continuing his work with the Court'.²⁰⁵ International organizations have furthermore declared Intigam Aliyev a 'prisoner of conscience'.²⁰⁶
172. The Parliamentary Assembly of the Council of Europe also explicitly mentioned him as an example of the 'systemic harassment of those who are critical of the government' and the consistent reports of the 'increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on alleged charges in relation to their work'.²⁰⁷
173. Intigam Aliyev was released from prison on 28 March 2016 as the result of a Presidential Pardon. While his 7.5 year prison sentence was converted into a suspended sentence, Aliyev has not been formally acquitted and continues to have a criminal record as the consequence of this flawed criminal trial, disabling him to carry out his profession of lawyer.²⁰⁸

²⁰² Netherlands Helsinki Committee, 'Fair trial for Azerbaijan's prisoners of conscience', 20 March 2015. Available online via: <https://www.nhc.nl/fair-trial-azerbajjans-prisoners-conscience/> (last accessed 6-3-2018).

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Council of Europe's Commissioner for Human Rights, 'Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Application No. 68762/14: Intigam ALIYEV v. Azerbaijan', 16 March 2015, CommDH(2015)6, paras 26 and 33.

²⁰⁶ Amnesty International, 'Azerbaijan releases human rights lawyer Intigam Aliyev', 28 March 2016. Available online via: <https://www.amnesty.org/en/press-releases/2016/03/azerbaijan-releases-human-rights-lawyer-intigam-aliyev/> (last accessed 6-3-2018). See also Human Rights Watch, 'Azerbaijan: Free Prisoners Before Baku Games', 7 April 2015. Available online via: <https://www.hrw.org/news/2015/04/07/azerbaijan-free-prisoners-baku-games> (last accessed 6-3-2018) and Netherlands Helsinki Committee, 'Fair trial for Azerbaijan's prisoners of conscience', 20 March 2015. Available online via: '<https://www.nhc.nl/fair-trial-azerbajjans-prisoners-conscience/>' (last accessed 6-3-2018).

²⁰⁷ Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) 'The functioning of democratic institutions in Azerbaijan', Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 10.

²⁰⁸ The International Bar Association's Human Rights Institute, 'Release of human rights lawyer Intigam Aliyev not enough, says IBAHRI', 1 April 2016. Available online via: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=86DCFF40-0539-45C3-B7BF-BE759C288603> (last accessed 6-3-2018).

D. ANAR MAMMADLI

174. Anar Mammadli is a well-known human rights defender from Azerbaijan, who has been active in independent monitoring elections with his non-governmental organization called the Election Monitoring and Democracy Studies Centre. The Council of Europe's Commissioner for Human Rights Nils Muižnieks described Mammadli as 'one of Azerbaijan's most professional organisers of election monitoring [...] [who] has provided the Council of Europe with valuable information about the human rights situation in Azerbaijan over the past several years'.²⁰⁹ For his work on human rights protection, Mammadli has won *i.a.* the Václav Havel Human Rights Prize from the Council of Europe's Parliamentary Assembly in 2014.²¹⁰

175. The facts of the case are very similar to the cases of Rasul Jafarov and Intigam Aliyev. Following the publication of critical reports in relation to widespread human rights violations during the Azerbaijani Presidential election, Mammadli was arrested on 16 December 2013 and subsequently charged with illegal entrepreneurship, tax evasion and abuse of power. Upon request of the prosecution, the Nasimi District Court ordered that Mammadli had to be placed in pre-trial detention for the period of three months, a decision which was subsequently upheld by the Baku Court of Appeal upon appeal on 23 December 2013.

176. Mammadli's two consecutive requests to convert his pre-trial detention into house arrest or a release on bail were also dismissed by both the lower Nasimi District Court and – upon appeal – the Baku Court of Appeal. Instead of converting the pre-trial detention to a less intrusive measure, Mammadli's pre-trial detention period was even extended by another three months in March 2014.²¹¹

177. The Council of Europe's Commissioner for Human Rights Nils Muižnieks described his case as 'an illustration of a serious and systemic human rights problem in Azerbaijan'.²¹² Several UN human rights experts, including the Special Rapporteur on the situation of human rights defenders, furthermore stated in a joint declaration published by the Office of the UN High Commissioner for Human Rights that 'Anar Mammadli, Rasul Jafarov and Intigam Aliyev [had] been targeted because of their legitimate human rights work', adding that these cases represented a 'trend of repression, criminalization and prosecution of human rights work in the country'.²¹³

178. The Parliamentary Assembly of the Council of Europe also explicitly mentioned him as an example of the 'systemic harassment of those who are critical of the government' and the consistent reports of the

²⁰⁹ Council of Europe's Commissioner for Human Rights, 'Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Application No. 47145/14, Anar MAMMADLI v. Azerbaijan', 30 March 2015, CommDH(2015)7, para 30.

²¹⁰ The Guardian, 'Jailed Azerbaijan activist awarded human rights prize', 1 October 2014. Available online via: <https://www.theguardian.com/world/2014/oct/01/vaclav-havel-human-rights-azerbaijan-anar-mammadli> (last accessed 6-3-2018).

²¹¹ See for a more detailed description of the legal proceedings furthermore European Court of Human Rights, Anar Asaf Oglu MAMMADLI v. Azerbaijan' (Application no. 47145/14), lodged on 17 June 2014.

²¹² Council of Europe's Commissioner for Human Rights, 'Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Application No. 47145/14, Anar MAMMADLI v. Azerbaijan', 30 March 2015, CommDH(2015)7, para 7.

²¹³ United Nations Office of the High Commissioner for Human Rights, "Deeply distressing" – UN experts condemn latest prison sentencing of rights defenders in Azerbaijan', 20 August 2015. Available online via: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16337&LangID=E> (last accessed 6-3-2018).

'increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on alleged charges in relation to their work'.²¹⁴

179. Anar Mammadli was sentenced to a five year prison sentence in May 2014. Having served already two and half years in prison, Mammadli was released from prison as the result of a Presidential Pardon together with *i.a.* human rights defender Rasul Jafarov on 17 March 2016.²¹⁵ The Baku Court of Appeals converted the remainder of his prison sentence into a suspended sentence. While Mammadli regained his freedom, it should be stressed that he has not been formally acquitted and continues to have a criminal record as the consequence of this flawed criminal trial.

E. KHADIJA ISMAYILOVA

180. Khadija Ismayilova is an investigative journalist and human rights defender, who has been an active and critical reporter of human rights violations and issues of corruption in Azerbaijan. Her articles are generally known for their critical reflection on the position of the Azerbaijani government. Just like Afghan Mukhtarli, Ismayilova has mainly worked for Radio Free Europe/Radio Liberty. Next to these investigative journalistic activities, she has been active in training journalists in 'investigative journalism and cross-border reporting' as a regional coordinator of the Organised Crime and Corruption Reporting Project.²¹⁶

181. Ismayilova has received 'international recognition and awards for her investigative journalism, including a media freedom award from the PEN American Centre in May 2015'.²¹⁷ The Council of Europe's Human Rights Commissioner furthermore described Ismayilova as a 'key civil society partner of the Council of Europe, providing valuable information about the human rights situation in Azerbaijan over the past several years'.²¹⁸

182. What happened in Ismayilova's case? First of all, following a series of articles concerning alleged corruption cases directly relating to the Azerbaijani President's family, Ismayilova was increasingly threatened anonymously, including a letter in March 2012 threatening to publish a 'secretly filmed video of her of an intimate nature'.²¹⁹ Another video – filmed with the same hidden camera inside Ismayilova's house – would be published in the summer of 2013. While Ismayilova formally reported the case to the

²¹⁴ Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) 'The functioning of democratic institutions in Azerbaijan', Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 10.

²¹⁵ See for instance Amnesty International, 'Azerbaijan: Release of 10 prisoners of conscience is a glimmer of hope for those still behind bars', 17 March 2016. Available online via: <https://www.amnesty.org/en/press-releases/2016/03/azerbaijan-pocs-release/> (last accessed 6-3-2018).

²¹⁶ European Court of Human Rights, Khadija Ismayilova v. Azerbaijan (Application no. 35283/14), lodged on 23 April 2014.

²¹⁷ Council of Europe's Commissioner for Human Rights, 'Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Application No. 30778/15 Khadija ISMAYILOVA v. Azerbaijan', 16 January 2016 CommDH(2016)6, para 26.

²¹⁸ *Ibid.*, para 27.

²¹⁹ European Court of Human Rights, Khadija Ismayilova v. Azerbaijan (Application no. 35283/14), lodged on 23 April 2014.

authorities, the criminal investigation did not lead to any results. Around this time, Ismayilova was also publicly slandered in ‘pro-government newspapers’.²²⁰

183. In December 2014, Ismayilova was arrested, detained and initially charged with inciting ‘a former colleague to commit suicide’.²²¹ The alleged ‘victim’ of this incitement later confirmed publicly that these assertions were unfounded.²²² Later she would be additionally charged with the same criminal offences often used in politically-motivated cases against human rights defenders and critical journalists, such as illegal entrepreneurship, tax evasion and abuse of power.²²³

184. The OSCE Representative on Freedom of the Media Dunja Mijatović immediately condemned the arrest of Ismayilova, stating i.a. that the arrest was ‘nothing but orchestrated intimidation, which is a part of the ongoing campaign aimed at silencing her free and critical voice’.²²⁴ The Council of Europe’s Human Rights Commissioner also publicly condemned the arrest, using i.a. social media to convey his message to the Azerbaijani authorities.²²⁵ The EU Commission’s spokesperson also condemned the arrest.²²⁶

185. Despite fierce international criticism, Ismayilova was placed in pre-trial detention in December 2014,²²⁷ only to be sentenced to seven and a half years’ imprisonment on 1 September 2015 in a closed criminal trial.²²⁸ In a prepared statement, Ismayilova intended to state that her case was politically motivated and that she would continue her work as a critical voice in Azerbaijan from prison, however, the court did not allow Ismayilova to read her statement in full.²²⁹

186. UN Human Rights Commissioner Zeid condemned the criminal proceedings against Ismayilova, stating that these proceedings ‘failed to meet international fair trial standards, with limited public access to the hearings, motions filed by the defence routinely rejected and inadequate time for consultation with her

²²⁰ European Court of Human Rights, Khadija Ismayilova v. Azerbaijan (Application no. 35283/14), lodged on 23 April 2014.

²²¹ Ibid.

²²² Bychawska-Siniarska, D., ‘The Functioning of the Judicial System in Azerbaijan and its impact on the Right to a Fair Trial of Human Rights Defenders’, Helsinki Foundation for Human Rights & Netherlands Helsinki Committee (2016), p. 40. Refs to OSCE, Office in Baku, Trial Monitoring Report (2011), p. 37. See also United States of America – State Department, ‘Azerbaijan, Human rights report’ (2015). Available online via: <http://www.state.gov/documents/organization/253035.pdf> (last accessed 6-3-2018).

²²³ European Court of Human Rights, Khadija Ismayilova v. Azerbaijan (Application no. 35283/14), lodged on 23 April 2014.

²²⁴ Organization for Security and co-Operation in Europe, ‘Arrest of journalist latest case of crackdown of free media in Azerbaijan, says OSCE Representative’, 5 December 2014. Available online via: <http://www.osce.org/fom/130076> (last accessed 6-3-2018).

²²⁵ Council of Europe’s Commissioner for Human Rights, ‘Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Application No. 30778/15 Khadija ISMAYILOVA v. Azerbaijan’, 16 January 2016 CommDH(2016)6, para 29: ‘On 9 December 2014, the Commissioner published a message on Facebook condemning the arrest and detention of the applicant. He stated notably that these events provided yet another illustration of the selective use of criminal provisions against those expressing critical views in the country.’ See also Organization for Security and co-Operation in Europe, ‘OSCE Representative and Council of Europe Commissioner for Human Rights condemn sentencing of journalist Khadija Ismayilova in Azerbaijan’, 1 September 2015. Available online via: <https://www.coe.int/en/web/commissioner/-/osce-representative-and-council-of-europe-commissioner-for-human-rights-condemn-sentencing-of-journalist-khadija-ismayilova-in-azerbaijan> (last accessed 6-3-2018).

²²⁶ EU Commission – EEAS, ‘Statement by the Spokesperson on the arrest of Azerbaijani journalist Khadija Ismayilova’, 9 November 2014. Available online via: http://eeas.europa.eu/statements-eeas/2014/141209_01_en.htm (last accessed 6-3-2018).

²²⁷ Radio Free Europe/Radio Liberty, ‘Prominent Azerbaijani Journalist Sent To Two-Month Pretrial Detention’, 5 December 2014. Available online via: <https://www.rferl.org/a/khadija-ismayilova-court-pretrial-detention-ruling-due/26727199.html> (last accessed 6-3-2018).

²²⁸ The Guardian, ‘Azerbaijan journalist Khadija Ismayilova vows to continue fight from prison’, 1 September 2015. Available online via: <https://www.theguardian.com/world/2015/sep/01/azerbaijan-khadija-ismayilova-verdict> (last accessed 6-3-2018).

²²⁹ Radio Free Europe/Radio Liberty, ‘Baku Court Cuts Off Ismayilova’s Fiery Final Statement; Verdict Delayed’, 31 August 2015. Available online via: <https://www.rferl.org/a/azerbaijan-ismayilova-statement-halted-verdict-delayed/27218157.html> (last accessed 6-3-2018).

lawyers'.²³⁰ Zeid added that this case was 'just the latest example of the crackdown on independent voices in the country.'²³¹

187. As one of the many obstacles to justice Ismayilova encountered during these flawed legal proceedings, it deserves to be highlighted here that she her access to legal representation was also problematized by a questionable suspension of the licence of her lawyer, Khalid Baghirov, by the National Bar Association exactly one day after he agreed to legally represent her in court.²³²

188. The earlier-mentioned Council of Europe's Human Rights Commissioner also intervened who stated that Ismayilova's case was 'a disturbing illustration of this pattern of reprisals against those who co-operate with international institutions, including the Council of Europe, to address human rights shortcomings in Azerbaijan'.²³³ Amnesty International declared Ismayilova a 'prisoner of conscience'.²³⁴

189. The Parliamentary Assembly of the Council of Europe also explicitly mentioned him as an example of the 'systemic harassment of those who are critical of the government' and the consistent reports of the 'increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on alleged charges in relation to their work'.²³⁵

190. Having served already a year and half in prison, Ismayilova was released on bail with a reduced sentence of three-and-a-half years on probation by the Azerbaijani Supreme court. While she regained her freedom, it should be stressed that she has not been formally acquitted and continues to have a criminal record as the consequence of this flawed criminal trial.

F. MEHMAN HUSEYNOV

191. Mehman Huseynov is an investigative journalist and human rights defender based in Azerbaijan. He is particularly well-known for his anti-corruption blogs and his work as the chairman of the Institute for Reporters' Freedom and Safety (IRFS).

²³⁰ United Nations Office of the High Commissioner for Human Rights, 'Zeid condemns civil society crackdown in Azerbaijan', 8 September 2015. Available online via: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16393&LangID=E> (last accessed 5-3-2018).

²³¹ Ibid.

²³² Amnesty International, 'Guilty of Defending Rights: Azerbaijan's Human Rights defenders and Activists behind bars', (2015). Available online via: <https://www.amnesty.org/en/documents/eur55/1077/2015/en/> (last accessed 6-3-2018).

²³³ Council of Europe's Commissioner for Human Rights, 'Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights Application No. 30778/15 Khadija ISMAYILOVA v. Azerbaijan', 16 January 2016 CommDH(2016)6, para 25. See also Council of Europe's Commissioner for Human Rights, 'Observations on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property', 23 April 2014, CommDH(2014)10, p. 1.

²³⁴ Amnesty International, 'Guilty of Defending Rights: Azerbaijan's Human Rights defenders and Activists behind bars', (2015). Available online via: <https://www.amnesty.org/en/documents/eur55/1077/2015/en/> (last accessed 6-3-2018).

²³⁵ Parliamentary Assembly of the Council of Europe, Resolution 2062 (2015) 'The functioning of democratic institutions in Azerbaijan', Text adopted by the Assembly on 23 June 2015 (22nd Sitting), para 10. See furthermore the critical statement by Secretary General Jagland on the verdict in the case of Khadija Ismayilova in Azerbaijan: Council of Europe's Secretary General, 'State of Democracy, Human Rights and the Rule of Law: A security imperative for Europe', (2016), p. 35. Available online via: <https://rm.coe.int/1680646af8> (last accessed 6-3-2018).

192. Huseynov had already been placed under a travel ban in connection to his work for the IRFS.²³⁶ In early January 2017, Huseynov was furthermore assaulted and subsequently arrested following a series of critical blogposts of his hand exposing corruption among Azerbaijani ministers and members of Parliament.²³⁷
193. On January 9th, Mehman Huseynov was attacked by a group of plain-clothed officers, who reportedly ‘bound [his] eyes and mouth with towels and forced a bag over his head. They used an electroshock weapon on his groin and punched him, bloodying his nose’.²³⁸ Huseynov was subsequently dragged into a car and brought to the Nasimi District Police Station, where he was formally arrested by Azerbaijani law enforcement officials.
194. As a result of his beatings, Huseynov experienced difficulty to remain conscious in the police station. He refused to sign documents and declarations the police placed before him, after which the local officials reportedly forged his signature on several documents.²³⁹ Huseynov remained detained until the next day, when he was brought before the court. His family and relatives were not informed about his whereabouts.
195. Huseynov was formally charged with ‘disobeying police orders’ on the basis of police reports which claimed that Huseynov had been ‘fighting on the street and [refusing] their orders to stop’.²⁴⁰ The legal representation of Huseynov during his criminal trial was only allowed to see his client for the first time in the court room, thus denying Huseynov adequate time for preparation of his legal defense.
196. Huseynov was furthermore visibly injured to his eye, groin, legs, and hands at the time of his criminal trial. It should be noted that he was denied medical care in the hospital because of his lack of a valid identification card. Huseynov’s identification card had been confiscated by the Azerbaijani authorities in 2014 – on the basis of the claim that the card would have been fake – and Huseynov’s repeated requests for a new identification card had been continuously denied.²⁴¹
197. Despite Huseynov’s vehement denial of the allegations, the court nevertheless found him guilty of these charges and ordered him to pay a 200 manat fine (EUR 96). This is not where the case ended for Huseynov, however. Following his release, Huseynov issued a statement in public in front of the police station where he had been detained, describing i.a. how several officers working at that specific police station had beat him up, using an electric shock on his groin.²⁴²

²³⁶ Human Rights Watch, ‘Harassed, imprisoned, exiled? Azerbaijan’s Continuing Crackdown on Government Critics, Lawyers and Civil Society’, 20 October 2016. Available online via: <https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbajians-continuing-crackdown-government-critics> (last accessed 6-3-2018).

²³⁷ Meydan TV, ‘Blogger Mehman Huseynov Released From Custody’, 10 January 2017. Available online via: <https://www.meydan.tv/en/site/news/20353/> (last accessed 6-3-2018).

²³⁸ Human Rights Watch, ‘The Price for Journalism in Azerbaijan’, 11 January 2017. Available online via: <https://www.hrw.org/news/2017/01/11/price-journalism-azerbaijan> (last accessed 6-3-2018).

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² IRFS, ‘Free Azerbaijani Journalist Mehman Huseynov’, 3 May 2017. Available online via: <https://www.irfs.org/news-feed/mehman/free-azerbaijani-journalist-mehman-huseynov/> (last accessed 6-3-2018).

198. Following these allegations, Huseynov was arrested again and charged with ‘defamation’ of the entire police station in question.²⁴³ He was convicted and sentenced to two years imprisonment.²⁴⁴ This sentence has been criticized harshly by international observers, including the HR/VP of the European Union who condemned his sentence for being ‘disproportionate to the alleged crime’, adding that ‘Mr Huseynov should be a witness in a credible and independent investigation of [the] allegations [concerning his ill-treatment and torture], seeking accountability for the perpetrators, as appropriate, not in jail’.²⁴⁵
199. Huseynov’s case was also mentioned explicitly by the European Parliament²⁴⁶ and the Parliamentary Assembly of the OSCE, with the latter naming him explicitly as a ‘political prisoner / prisoner of conscience’.²⁴⁷ The OSCE’s former Representative on Freedom of the Media Dunja Mijatović furthermore demanded – in response to the case against Huseynov – that ‘the ongoing and increasing number of repressive actions against independent media and advocates of freedom of expression in Azerbaijan must stop’.²⁴⁸ She emphasized that ‘[p]ractically all independent media representatives and media NGOs have been purposefully persecuted under various, often unfounded and disturbing charges’, adding that she repeated her ‘call on the authorities in Azerbaijan to end this hostile attitude against free media’.²⁴⁹
200. The case of Mehman Huseynov has furthermore been described as ‘emblematic’ for the human rights violations critical journalists encounter in Azerbaijan and has drawn fierce criticism from civil society organizations across the globe.²⁵⁰
201. Mehman Huseynov remains imprisoned until today.

²⁴³ IRFS, ‘Free Azerbaijani Journalist Mehman Huseynov’, 3 May 2017. Available online via: <https://www.irfs.org/news-feed/mehman/free-azerbaijani-journalist-mehman-huseynov/> (last accessed 6-3-2018).

²⁴⁴ Human Rights Watch, ‘Joint NGO Letter on Human Rights in Azerbaijan on the Eve of the Eastern Partnership Summit’, 9 November 2017. Available online via: <https://www.hrw.org/news/2017/11/09/joint-ngo-letter-human-rights-azerbaijan-eve-eastern-partnership-summit> (last accessed 6-3-2018).

²⁴⁵ EU Commission – EEAS, ‘Statement on the sentencing of Mehman Huseynov in Azerbaijan’, 7-3-2018. Available online via: https://eeas.europa.eu/headquarters/headquartershomepage_en/22074/Statement%20on%20the%20sentencing%20of%20Mehman%20Huseynov%20in%20Azerbaijan (last accessed 6-3-2018).

²⁴⁶ European Parliament resolution of 15 June 2017 on the case of Azerbaijani journalist Afgan Mukhtarli (2017/2722(RSP)), para 9.

²⁴⁷ Parliamentary Assembly of the Council of Europe, Resolution 2184 (2017), ‘The functioning of democratic institutions in Azerbaijan’, Text adopted by the Assembly on 11 October 2017 (32nd Sitting), para 16.3.

²⁴⁸ Organization for Security and cooperation in Europe, ‘Increased repression of free media in Azerbaijan must stop, OSCE Representative says’, 10 November 2014. Available online via: <https://www.osce.org/fom/126534> (last accessed 6-3-2018).

²⁴⁹ Ibid.

²⁵⁰ Netherlands Helsinki Committee, ‘Free Azerbaijani Journalist Mehman Huseynov – Joint Statement’, 3 May 2017. Available online via: <https://www.nhc.nl/free-azerbaijani-journalist-mehman-huseynov-joint-statement/> (last accessed 6-3-2018); Netherlands Helsinki Committee, ‘Azerbaijan: Crackdown on Free Expression Accelerates With Conviction of Prominent Blogger’, 3 March 2017. Available online via: <https://www.nhc.nl/azerbaijan-crackdown-free-expression-accelerates-conviction-prominent-blogger/> (last accessed 6-3-2018); and Netherlands Helsinki Committee, ‘Rights Groups Demand Justice for journalist Mehman Huseynov Tortured in Azerbaijan’, 12 January 2017. Available online via: <https://www.nhc.nl/rights-groups-demand-justice-journalist-mehman-huseynov-tortured-azerbaijan/> (last accessed 6-3-2018).

VI. CRITICAL PROSECUTORS SILENCED: THE CASE OF RUFAT SAFAROV

202. The previous chapter contained summary discussions of six prominent cases of human rights defenders, where the Azerbaijani judiciary and prosecution services played a decisive role in the restriction of their working space and even contributed to the obstruction of their individual human rights.
203. While there are not many individual Azerbaijani prosecutors who speak out against the ongoing corruption and human rights violations within the Azerbaijani prosecution service, it seems clear that the Prosecutor-General's Office is ready to employ similar strategies in response to anyone who speaks out against the ongoing corruption and human rights violations in the prosecution services of Azerbaijan.
204. This chapter is devoted to the case of Rufat Safarov, an Azerbaijani prosecutor who resigned in 2015 in protest of governmental abuse of power and corruption in the prosecution service and was subsequently accused of corruption himself and tried and sentenced to nine years imprisonment.
205. Rufat Safarov resigned from his position as an investigator in Zardab District Prosecutor's Office on 20 December 2015, sending a copy of his letter of resignation to Prosecutor General Zakir Garalov to Azerbaijani news outlet *azpolitika.info*.²⁵¹ In his letter, he said that he had decided to take this step a 'sign of protest against the massive injustices in the country'.²⁵²
206. Directing his letter also to the people of Azerbaijan, Safarov stated that he did not resign as the result of personal or professional problems, but that it had been a conscious decision out of protest of the corruption and human rights violations in Azerbaijan: '[t]he rampant dishonesty and violation of people's rights in this country, and the pretence of "honesty" among rich and immoral people has forced me to make this decision' Safarov stated in a public statement.²⁵³
207. 'Today', continued Safarov in his public statement, 'thieves and corrupt officials are free and enjoying life, while innocent people languish in prison. Their only crime is voicing the truth'.²⁵⁴ 'I am 34 years old and I am ready to sacrifice myself for the sake of my people. In Azerbaijan, there is no rule of law – only the rule of lawlessness. There is no freedom left in this country. There is only the "freedom to die." Private property is seized arbitrarily by officials and their affiliates. Ninety percent of the population is going hungry. This and other bitter realities compels me to stand by my people without fear'.²⁵⁵
208. It should be noted that Safarov is the son of former MP Eldar Sabiroglu, who is one of the founders of the ruling party "Yeni Azerbaijan" and a former senior spokesperson at the Ministry of Defence of

²⁵¹ Virtual Azerbaijan, 'Keçmiş deputatın prokurorluqda işləyən oğlu müxalifətə keçdi', 21 December 2016. Available online via: <http://virtualaz.org/uzbeuz/59939> (last accessed 6-3-2018).

²⁵² Transparency Azerbaijan, 'Sabiq müstəntiq son söz deyəcək', 8-9-2016. Available online via: <http://transparency.az/cnews/sabiq-must%C9%99ntiq-son-soz-dey%C9%99c%C9%99k/> (last accessed 6-3-2018).

²⁵³ IRFS, 'Former MP's son resigns in protest against human rights violations', 21 December 2015. Available online via: <https://www.irfs.org/news-feed/former-mps-son-resigns-in-protest-against-human-rights-violations/> (last accessed 6-3-2018).

²⁵⁴ Ibid., and also Virtual Azerbaijan, 'Keçmiş deputatın prokurorluqda işləyən oğlu müxalifətə keçdi', 21 December 2016. Available online via: <http://virtualaz.org/uzbeuz/59939> (last accessed 6-3-2018).

²⁵⁵ Ibid.

Azerbaijan.²⁵⁶ Safarov has stated in this context that he had ‘never truly accepted [his] father’s political views’ and that he should have spoken out earlier: ‘I have always expressed my concerns over injustices in the country, violations of rights and freedoms, the ever increasing lawlessness, imprisonment of people for their views, and the abolition of political, economic, cultural, social and other rights as almost an official policy. Of course, this does not solve anything; the decisive thing could be to share your opinions before the public at large, and to reveal what is what.’²⁵⁷

209. Instead of dismissing Safarov from the prosecution service of Azerbaijan following his letter of resignation, the Prosecutor General’s Office established on December 21 – notably the day after the publication of Safarov’s letter – a committee to investigate Rufat Safarov’s professional activities at Zardab District Prosecutor’s Office, where he had worked for the past five years.²⁵⁸

210. Following this investigation, the Prosecutor General’s Office later claimed that Rufat Safarov himself had violated several provisions of the Azerbaijani Law on the Prosecutor’s Office and the Code of Ethics for Prosecutorial Offices of the Republic of Azerbaijan.²⁵⁹ Rufat Safarov was subsequently arrested on 15 January 2016 and placed under house arrest.

211. The Prosecutor General’s Office for Combating Corruption formally installed criminal prosecution and ultimately charged him with ‘repeated bribery’.²⁶⁰ Safarov was placed under house arrest.

212. When the Prosecutor-General’s Office searched Safarov’s house and office, they were unable to demonstrate a court order which would have provided the legal basis for these searches. Safarov stated in this context: ‘I demanded to show an official document, the judgment that authorizes a search. No documents were presented. I was just told that the searches were conducted on the order of their top managers’.²⁶¹

213. In response to this, Safarov went on a hunger strike to ‘force the leaders of the Prosecutor-General’s Office to give a legal assessment of the actions of its employees, who conducted searches without a warrant’.²⁶²

214. During his pre-trial detention, Safarov was placed in a cell without window glass, which was not glazed despite repeated requests to cover the window-opening.²⁶³ As a result of this, Safarov had ‘caught a bad cold, and he has still not completely recovered. This is in fact inhuman treatment’, according to his father Eldar Sabiroglu.

²⁵⁶ Caucasian Knot, ‘In Azerbaijan, activists create committee to protect Rufat Safarov’s rights’, 6 October 2016. Available online via: <http://www.eng.kavkaz-uzel.eu/articles/37132/> (last accessed 5-3-2018).

²⁵⁷ IRFS, ‘Former MP’s son resigns in protest against human rights violations’, 21 December 2015. Available online via: <https://www.irfs.org/news-feed/former-mps-son-resigns-in-protest-against-human-rights-violations/> (last accessed 6-3-2018).

²⁵⁸ Ibid.

²⁵⁹ Transparency Azerbaijan, ‘Sabiğ müstəntiq son söz deyəcək’, 8-9-2016. Available online via: <http://transparency.az/cnews/sabiğ-müst%C9%99ntiq-son-soz-dey%C9%99c%C9%99k/> (last accessed 6-3-2018).

²⁶⁰ IRFS, ‘Rufat Safarov and Tofiq Hasanli Transferred to Prison’, 6 January 2017. Available online via: <https://www.irfs.org/news-feed/rufat-safarov-and-tofig-hasanli-transferred-to-prison/> (last accessed 6-3-2018).

²⁶¹ Caucasian Knot, ‘Azerbaijan: investigator Safarov goes on hunger strike’, 22 December 2015. Available online via: <http://www.eng.kavkaz-uzel.eu/articles/34056/> (last accessed 6-3-2018).

²⁶² Ibid.

²⁶³ Caucasian Knot, ‘In Azerbaijan, activists create committee to protect Rufat Safarov’s rights’, 6 October 2016. Available online via: <http://www.eng.kavkaz-uzel.eu/articles/37132/> (last accessed 5-3-2018).

215. A group consisting of several lawyers has created a 'defence committee' in order to 'protect the rights of Rufat Safarov'.²⁶⁴ The credibility of the allegations issued by the Prosecutor-General's Office against Safarov seem doubtful. Safarov himself has claimed explicitly that these allegations were in fact 'politically motivated'.²⁶⁵
216. The complaints of 'bribe' on the basis of which Safarov was accused and prosecuted were filed only after Safarov published his letter of resignation. Interestingly, the officials working in the Zardab region – who according to the Prosecutor-General's Office would have bribed Safarov – were themselves not prosecuted for bribing an Azerbaijani state official, despite a formal motion to this effect by Safarov's legal representation.
217. These persons included the 'chairman of Alibayli village municipality head Elchin Khalilov, Zardab District Electricity Network employee Alamdar Abbasov, Zardab District Veterinary Office employee Mansur Panahov, Zardab District Culture and Tourism Department head Eldaniz Abdullayev'.²⁶⁶
218. Witnesses' testimonies were also 'significantly inconsistent'. One of the witnesses, Babek Hakjiyev, retracted his initial incriminating testimony and stated in court that 'he was given a text and he signed it without reading and [that] during the trial it turned out that the testimony [was] against Safarov'.²⁶⁷
219. The public prosecutor requested a 10 years prison sentence for Safarov. On 8 September 2016, Safarov was tried and sentenced to 9 years imprisonment by the Lankaran Court of Grave Crimes.²⁶⁸ The Shirvan Court of Appeal upheld this decision on 22 December 2016. Safarov remains imprisoned until today.²⁶⁹

²⁶⁴ Caucasian Knot, 'In Azerbaijan, activists create committee to protect Rufat Safarov's rights', 6 October 2016. Available online via: <http://www.eng.kavkaz-uzel.eu/articles/37132/> (last accessed 5-3-2018).

²⁶⁵ World Movement for Democracy, 'A unified list of political prisoners in Azerbaijan: Covering the period up to 25 May 2017', p. 96. Available online via: https://www.helpsetthemfree.org/wp-content/uploads/2018/01/Political-prisoners-in-Azerbaijan-Report_May_2017-1.pdf (last accessed 5-3-2018).

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Meydan TV, "'Rüfət Səfərova Cəzaçəkmə Müəssisəsində təzyiqlik edirlər", 10 January 2017. Available online via: <https://www.meydan.tv/az/site/news/20376/> (last accessed 5-3-2018).

²⁶⁹ World Movement for Democracy, 'A unified list of political prisoners in Azerbaijan: Covering the period up to 25 May 2017', p. 96. Available online via: https://www.helpsetthemfree.org/wp-content/uploads/2018/01/Political-prisoners-in-Azerbaijan-Report_May_2017-1.pdf (last accessed 5-3-2018).

VII. CONCLUSION

220. This complaint by the Netherlands Helsinki Committee to the International Association of Prosecutors regarding the prosecution service of Azerbaijan has analysed the instrumental role played by Azerbaijani prosecutors in restricting the working space for human rights defenders and civil society in Azerbaijan. The report demonstrates that the Azerbaijani practice to unjustly criminalise human rights defenders and others voicing criticism of the Azerbaijani government based on trumped-up charges, does not only concern individual cases, but in fact constitutes an institutional and systemic practice by the Azerbaijani prosecutorial authorities.

221. The report has first of all analysed the lack of independence of the prosecution services in Azerbaijan, highlighting the main structural factors compromising the independence of prosecutorial authorities in Azerbaijan (Chapter II). It has been demonstrated that the strong Presidential oversight over ongoing criminal investigations and the influence of the executive over both the appointment and promotion procedures within the prosecution service of Azerbaijan render the independence of the prosecutorial authorities problematic, since they create various institutional incentives for individual prosecutors to align their professional decisions with governmental preferences. The strictly hierarchical system furthermore makes independent decisionmaking for low-ranking prosecutors almost impossible, while the disciplinary procedures for prosecutors in Azerbaijan also raise a risk of political retribution in response to unwelcome decisions.

222. This lack of independence contrasts starkly with the independent position of prosecution services as envisaged by the Standards of Professional responsibility and statement of the essential duties and rights of prosecutors as adopted by the International Association of Prosecutors. According to the IAP standards, prosecutors shall 'strive to be [...] independent and impartial' and that 'the use of prosecutorial discretion [...] should be exercised independently and be free from political interference'.²⁷⁰ Notably the strong Presidential oversight over the prosecutorial authorities and his *de facto* right to familiarise himself with ongoing criminal investigations also seem contrary to article 2.2 of the IAP Standards, which requires more specifically that any instructions from non-prosecutorial authorities (when allowed) should be 'transparent, consistent with lawful authority [and] subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence'.²⁷¹

223. Secondly, the report has analysed the *de facto* legal practice of the Azerbaijani prosecution services, highlighting three main issues which also constitute clear violations of several provisions of the IAP Standards (Chapter III). First of all, the prosecution of human rights defenders and those voicing criticism of the Azerbaijani government on the basis of trumped-up charges, without supporting

²⁷⁰ Articles 1 (e) and 2.1 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

²⁷¹ Article 2.2 of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

evidence constitutes a violation of the IAP standards, which explicitly require prosecutors only to proceed with criminal prosecution in cases when the ‘case is well-founded upon evidence reasonably believed to be reliable and admissible [and expects prosecutors] not [to] continue with a prosecution in the absence of such evidence’.²⁷²

224.A second major issue arising in the *de facto* practice of the Azerbaijani prosecution services is the ‘routinely’ use of torture and ill-treatment of persons in custody in order to extract confessions and the subsequent use of evidence in court of such ‘confessions’. This constitutes a clear breach of several provisions of the IAP Standards, which require prosecutors to ensure ‘that the investigating services respect legal precepts and fundamental human rights’; to ‘examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained’; to ‘refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect’s human rights and particularly methods which constitute torture or cruel treatment’; and to ‘ensure that appropriate action is taken against those responsible for using such methods’.²⁷³

225.A third issue that has been identified in the legal practice of the Azerbaijani prosecution services, which also runs counter the IAP Standards, is the Azerbaijani’s prosecutorial authorities’ failure to safeguard fundamental rights of persons in custody. This constitutes a breach of several provisions of the IAP Standards, which *i.a.* require prosecutors to ‘safeguard the rights of the accused in co-operation with the court and other relevant agencies’; to ‘always protect an accused person’s right to a fair trial’ and to ‘respect, protect and uphold the universal concept of human dignity and human rights’.²⁷⁴

226.The extensive overview of recent reports, statements and conclusions by intergovernmental organizations regarding the justice system and the rule of law in Azerbaijan – including statements from the United Nations, Council of Europe, the Organization for Security and Cooperation in Europe and the European Union – has provided a further substantiation of the general trend described in this background report, which is that Azerbaijani prosecutors play an instrumental role for the Azerbaijani governmental authorities in the execution of repressive policies towards human rights defenders and civil society at large.

227.The case summaries of six prominent cases of Azerbaijani human rights defenders (Chapter V) and the case of critical Azerbaijani prosecutor Rufat Safarov (Chapter VI) have furthermore provided the reader with a more concrete demonstration how the Azerbaijani prosecution service employs regular criminal laws and procedures to silence those who voice criticism of the government of Azerbaijan or even those who speak out – from within the prosecution service – against ongoing corruption and human rights violations.

²⁷² Article 4.2 (d) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

²⁷³ Art 4.2 and 4.3 (e), (f) and (g) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

²⁷⁴ Article 4.3 and 1 (f) and (h) of the Standards of professional responsibility and statement of the essential duties and rights of prosecutors adopted by the International Association of Prosecutors on 23 April 1999.

228. It is concluded that the prosecutorial authorities in Azerbaijan operate in clear violation of the professional standards that have been adopted by the International Association of Prosecutors (IAP). Despite continuing international efforts to influence and enhance judicial and prosecutorial independence in the Azerbaijani legal system, the maintenance of professional standards within the current corrupt and politicized Azerbaijani system are likely to remain a difficult challenge for the foreseeable future and outside questioning of prosecutors' records may be the only option.
229. Together with critical monitoring by independent media and civil society and legal procedures by Azerbaijani human rights lawyers who continue to insist on using proper legal procedures to enforce fundamental rights Azerbaijan pertains to safeguard, branche organizations – such as the International Organization of Prosecutors – have the potential to play a particularly influential role in this context by advising – as prosecutorial peers – on possible means of changing both system and legal culture with the goal of enhancing prosecutorial independence in Azerbaijan.
230. However, with the current particularly dire human rights situation in Azerbaijan and, more specifically, the instrumental role played by the Azerbaijani prosecution services in the execution of the repressive policies of the Azerbaijani government, a mere continuation of 'business as usual' with Azerbaijani members of the IAP runs counter to the Association's own Constitution.
231. As enshrined in article 1.3 of the IAP's Constitution, the main objectives of the organization are *i.a.* 'to respect and seek to protect human rights as laid down in the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948' and to 'promote and enhance those standards and principles which are generally recognised internationally as necessary for the proper and independent prosecution of offences'.²⁷⁵
232. The current background report has demonstrated that the prosecutorial authorities in Azerbaijan operate in clear violation of the professional standards that have been adopted by the International Association of Prosecutors (IAP). The report thus provides conclusive evidence of 'dishonourable conduct' from the Azerbaijani prosecution services.
233. The Netherlands Helsinki Committee seeks to emphasize that the Constitution of the IAP stipulates that its members can be suspended or expelled if it is considered that the member in question 'has been guilty of dishonourable conduct or that continuation of his/her or its active participation in the activities of the Association or of his/her or its membership is detrimental to the Association'.²⁷⁶
234. The Netherlands Helsinki Committee therefore requests the IAP to initiate steps to consider suspension of the membership of Azerbaijani entities from the organization and to furthermore make continued membership dependent on credible steps towards improvement of compliance with professional standards.

²⁷⁵ International Association of Prosecutors, 'Constitution of the International Association of Prosecutors', September 2017.

²⁷⁶ Article 6.2 of the Constitution of the IAP in conjunction with Annex 3 'Suspension from membership'. International Association of Prosecutors, 'Constitution of the International Association of Prosecutors', September 2017.

VIII. ANNEX: LIST OF PROSECUTORS INVOLVED IN POLITICALLY-MOTIVATED CASES AGAINST HUMAN RIGHTS DEFENDERS AND JOURNALISTS IN AZERBAIJAN

1. In further substantiation of the current complaint to the IAP regarding the Azerbaijani prosecution services, the Netherlands Helsinki Committee has decided to annex a (non-exhaustive) overview of individual names of persons who – as part of the Azerbaijani prosecution services – have been professionally involved with politically-motivated cases against human rights defenders and investigative journalists in Azerbaijan. This annex provides more specifically an alphabetical overview of individuals that work within the Azerbaijani prosecutorial authorities, who have played a significant role in the politically motivated prosecution of the human rights defenders and investigative journalists that have been discussed in brief in Chapter V of the current complaint report.
2. **DISCLAIMER:** While this list of prosecutors has been compiled with the greatest possible care, no rights may be derived from its contents. It should be emphasized, furthermore, that the presentation of these individual names within the prosecution services of Azerbaijan does not take away the responsibility of the Azerbaijani prosecution service as a whole, given the systemic nature of the criminalization of human rights defenders on the basis of trumped-up charges in Azerbaijan.

Abbas Abbasli	Public prosecutor, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Khadija Ismayilova before the Baku Court of Appeal.
Akbarov Vasib Samid	Senior prosecutor at the Investigation of Serious Crimes Department within the Prosecutor General's Office, who was actively involved with the prosecution in the politically-motivated criminal cases against human rights defenders Leyla and Arif Yunus, Rasul Jafarov and Intigam Aliyev.
Anar Tarverdiyev	Public prosecutor, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Anar Mammadli.
Eldar Ahmadov	Chief of the Serious Crimes Investigation Department within the Prosecutor General's Office and head of the investigation team in the politically-motivated criminal cases against human rights defenders Rasul Jafarov and Intigam Aliyev.
Elviz Salayev	Member of the investigation team who was actively involved with the prosecution in the politically-motivated criminal cases against human rights defenders Rasul Jafarov and Intigam Aliyev.
Farid Naghiyev	Public Prosecutor, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Leyla and Arif Yunus.

Gambayev Deyanet Anzali	Senior Prosecutor at the Department on Investigation of Serious Crimes within the Prosecutor General's Office and Senior Justice Adviser, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Rasul Jafarov.
Gasim Mammadov	Member of the investigation team, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Intigam Aliyev.
Gurbat Mammadov	Public Prosecutor, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Afgan Mukhtarli.
Ibrahim Lambaranski	Public Prosecutor, who was actively involved with the politically-motivated cases against human rights defenders Leyla and Arif Yunus.
Igbal Huseynov	Member of the investigation team who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Rasul Jafarov.
Mubariz Mirili	Public prosecutor at the department on the Protection of State Prosecution within the Prosecutor General's Office, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Rasul Jafarov.
Musa Musayev	Chief of Nasimi District Police Department, who filed a lawsuit against human rights defender Mehman Huseynov, accusing him of slander. Mehman Huseynov was ultimately sentenced to two years in prison as a result of this lawsuit.
Mustajab Aliyev	Public prosecutor, who was actively involved with the prosecution before the Supreme Court in the politically-motivated criminal case against human rights defender Khadija Ismayilova.
Orkhan Babayev	Member of the investigation team who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Rasul Jafarov.
Orkhan Damirli	Public prosecutor, who was actively involved with the politically-motivated case against human rights defender Intigam Aliyev.
Ramazan Hadiyev	Public prosecutor at the Serious Crimes Investigation Department within the Prosecutor General's Office, who was actively involved with the prosecution in the politically-motivated criminal

	case against human rights defender Khadija Ismayilova.
Ramil Gurbanov	Senior investigator at the Investigation of Serious Crimes Department within the Prosecutor General`s Office, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Rasul Jafarov.
Rasul Abbasov	Public prosecutor, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Anar Mammadli.
Rizvan Shammadov	Public prosecutor, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Rasul Jafarov.
Rustam Usubov	First Deputy Prosecutor General of Azerbaijan, who was actively involved with the prosecution in the politically-motivated criminal case against human rights defender Rasul Jafarov.
Rzayev Sattar Firid oglu	Public prosecutor working at the Department for the Investigation of Serious Crimes within the Prosecutor General's Office, who was actively involved with the prosecution in the politically-motivated criminal cases against human rights defenders Rasul Jafarov, Intigam Aliyev, Anar Mammadli and Leyla and Arif Yunus.
Sanan Pashayev	Member of the investigation team at the Serious Crimes Investigation Department within the Prosecutor General's Office, who was actively involved with the prosecution in the politically-motivated criminal cases against human rights defenders Rasul Jafarov, Intigam Aliyev, Khadija Ismayilova, Leyla and Arif Yunus.
Seyhun Azadaliyev	Public prosecutor, who was actively involved with the prosecution in the politically-motivated criminal cases against human rights defenders Rasul Jafarov and Intigam Aliyev.
Vugar Nasibov	Senior justice advisor and member of the investigation team who was actively involved with the prosecution in the politically-motivated criminal cases against human rights defenders Rasul Jafarov, Intigam Aliyev and Anar Mammadli.