

EUROPEAN HUMAN RIGHTS ADVOCACY CENTRE

EHRAC

SUMMER 2008
ISSUE 9



МЕМОРИАЛ

In partnership with Memorial Human Rights Centre (MHRC), the Georgian Young Lawyers' Association (GYLA) and Article 42 of the Constitution

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Azerbaijan under scrutiny from the European Court of Human Rights

The release or retrial of political prisoners according to universally recognised standards was an obligation undertaken by the Government of Azerbaijan upon accession to the Council of Europe (CoE) in January 2001. In the autumn of the same year, however, it became clear that there would be no political amnesty for convicted opponents of the Government. After retrials in 2003-2005 it became apparent that justice had still not been achieved, and was unlikely in the future. In 2005 a new initiative was started, reflected in several resolutions of the Parliamentary Assembly of the Council of Europe (PACE) – the referral of the problem to the ECtHR.

Since then, four out of 13 ECtHR judgments against the Republic of Azerbaijan have concerned former political prisoners and/or opposition leaders. Of the 32 admissibility decisions, seven relate to complaints by political prisoners and two applications have been lodged by political émigrés. In particular, the applicant in *Abbasov v Azerbaijan* (No. 24271/05) 17/1/08 featured in the list of alleged political prisoners submitted to the Secretary General of the CoE upon Azerbaijan's accession to the CoE and the applicant in *Hummatov v Azerbaijan* (Nos. 9852/03 and 13413/04) 29/11/07 has been recognised as a political prisoner by independent CoE experts.¹

The majority of these applications alleged violations of the right to impartial investigation and fair criminal proceedings. Thus, in *Hummatov v Azerbaijan*, the ECtHR found violations of Arts. 3, 6 and 13 of the ECHR as the applicant did not (i) receive adequate medical treatment in prison; (ii) have an effective domestic remedy against this lack of adequate medical treatment; and (iii) have a fair trial. In *Mammadov (Jalaloglu) v Azerbaijan* (No. 34445/05) 11/1/07, the ECtHR established breaches of Arts. 3 and 13 as the applicant, who

was an opposition leader, was subjected to ill-treatment in police custody and there was no effective investigation into his allegations of ill-treatment. In *Hajiyev v Azerbaijan* (No. 5548/03) 16/11/06, the applicant's name appeared in the list of alleged political prisoners and the ECtHR found a violation of the applicant's right to a fair trial due to the failure of the Court of Appeal of the Republic of Azerbaijan to deal appropriately with his appeal.

In *Abbasov v Azerbaijan* the ECtHR not only found a violation of Art. 6 because the Court hearing on the applicant's appeal took place without the participation of the defendant, but also made recommendations to the domestic authorities under Art. 46. Although the case concerned appeal proceedings, the ECtHR noted that it "cannot ignore the fact that the applicant was included in the list of 'alleged political prisoners' submitted to the experts of the Secretary General upon Azerbaijan's accession to the Council of Europe, indicating that there were certain doubts as to the fairness of the applicant's conviction in 1996."² Therefore, "the Court considers that a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation in the present case."³

The delays in registration of non-governmental organisations (NGOs) has also given rise to several applications against the Republic of Azerbaijan. Thus, in *Ramazanov and Others v Azerbaijan* (No. 44363/02) 1/2/07, *Ismayilov v*

Azerbaijan (No. 4439/04) 17/1/08 and *Nasibova v Azerbaijan* (No. 4307/04) 18/10/07 the significant delays in the registration of NGOs were found to violate Art. 11 of the ECHR.

As to admissibility decisions concerning 'non-political' cases, these have created important precedents for future cases from and against Azerbaijan. The following cases were declared inadmissible on procedural grounds:

- applications pre-dating the entry into force of the ECHR with respect to the Republic of Azerbaijan and therefore

declared to be inadmissible or partly inadmissible *ratione temporis*: *Perchenok v Azerbaijan* (No. 34465/02) dec. 30/1/03; *Kazimova v Azerbaijan* (No. 40368/02); dec. 6/3/03; *Humbetov v Azerbaijan* (No. 9852/03) dec. 11/09/03; *Guliyev and Ramazanov v Azerbaijan* (No. 34553/02) dec. 9/9/04; *Abbasov v Azerbaijan* (No. 24271/05) dec. 24/10/06; *Gaziyev v Azerbaijan* (No. 2758/05) dec. 8/2/07; and *Fatullayev v Azerbaijan* (No. 33875/02) dec. 28/9/06.

- applications declared inadmissible or partly inadmissible due to the non-exhaustion of domestic remedies: *Hamidov v Azerbaijan* (No. 283/03) dec. 8/1/04; *Hajiyeva v Azerbaijan* (No. 20700/03) dec. 22/9/05; *Kunqurova* (No. 5117/03) dec. 23/6/05; *Guliyev v Azerbaijan* (No. 35584/02) dec. 27/5/04; and *Ivanov v Azerbaijan* (No. 34070/03) dec. 15/2/07.

In addition, the complaints of political émigrés in *Mutalibov v Azerbaijan* (No. 31799/03) dec. 19/2/04 and *Guliyev v Azerbaijan*, who had sought the right to participate in national elections, were declared inadmissible *ratione materiae*. It was noted that the examination of disputes concerning presidential elections related to political rights, and not civil rights or criminal affairs, and therefore did not fall within the remit of Art. 6 or Art. 3 of Prot. 1 to the ECHR, as the institution of 'president' was not a 'legislative power' for the purposes of the ECHR.

In *Bayramov v Azerbaijan* (No. 23055/03) dec. 14/2/06 the issue of admissibility *ratione personae* was broached. In view of the fact that the applicant was a member of an association which founded the private corporation, and its executive director, he was not accorded victim status in the context of Art. 34 of the ECHR as he was not a shareholder.

It should be noted that in 2006 the Azerbaijani authorities introduced several measures aimed at ensuring the

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application of ECHR caselaw in the practice of national courts. Thus, on 19 January 2006, the President of the Republic of Azerbaijan issued an edict according to which higher instance courts were instructed to study and use ECHR caselaw. The Plenum of the Supreme Court took a similar decision on 30 March 2006. Furthermore, an amendment was introduced into the Criminal Procedure Code, in accordance with which an ECtHR judgment against the Republic of Azerbaijan on a specific case requires its review by the Plenum of the Supreme Court. Using these statutory provisions, the former political prisoner, Sardar Mammadov (Jalaloglu), having won his case at the ECtHR, is currently demanding a review of his case and the punishment of those responsible for his ill-treatment. In September 2007, the Plenum of the Supreme Court quashed the court decisions of 2004 and returned the case to a trial court to investigate the allegations of torture.

It is reassuring that, in some instances the Azerbaijani authorities are seeking 'friendly settlements' with applicants in order not to take complaints to trial, including registering organisations and releasing people from detention early. For these reasons, the applicants in

Shirinov v Azerbaijan (No. 35608/02) dec. 19/1/06, Mustafayev v Azerbaijan (No. 14712/05) dec. 9/11/06 and Asadov and Others v Azerbaijan (No. 138/03) 26/10/06 withdrew their complaints.

However, the authorities are undertaking other measures to withdraw certain complaints from trial. For example, after communication of some complaints to the Azeri authorities, the Plenum of the Supreme Court quickly reversed the last decision in the case and referred the case back to a lower authority. Following this a statement was made that the applicant had not exhausted domestic remedies. It stands to reason that such steps are not conducive to eliminating human rights violations. This happened in the case of Guliyev and Ramazanov v Azerbaijan - the case was returned to the Court of Appeal by the Plenum, and the attempts at negotiating a friendly settlement ended unsuccessfully due to missed deadlines. During the proceedings in Fatullayev, the Plenum twice returned the case to the Court of Appeal and then delayed procedures (by up to 15 months) in the local courts until the ECtHR found the application inadmissible due to the non-exhaustion of domestic remedies.

The applicant in the case of Ismayilov (No. 6285/03) dec. 7/6/07 died four years after the case was lodged with ECtHR and while it was still pending

an admissibility decision. The case was struck out of the list.

To date only 3% of admissibility decisions in cases against Azerbaijan have been positive.⁴ On 31 December 2007, 979 cases against Azerbaijan were pending before a decision body of the ECtHR.⁵ Hopes for the speeding up of appeals to the ECtHR were raised by the ratification by the Azerbaijani Parliament of Protocol 14 to the ECHR on 4 April 2006. However, its entry into force is still postponed because of Russia's position. Therefore, the ECtHR has not yet taken the critical quantity of decisions regarding Azerbaijan that might substantially influence judicial practice and the situation concerning the observance of human rights in the country.

1 Council of Europe, 2001. Document SG/Inf(2001)34 / 24 October 2001, Cases of alleged political prisoners in Armenia and Azerbaijan, [Online]. Available at: [http://www.coe.int/t/e/SG/Secretary-General/Information/Documents/Numerical/2001/SGInf\(2001\)34E.asp#TopOfPage](http://www.coe.int/t/e/SG/Secretary-General/Information/Documents/Numerical/2001/SGInf(2001)34E.asp#TopOfPage) [accessed 13 March 2008].

2 Para. 40.

3 Para. 41.

4 Registry of the European Court of Human Rights, 2008. Survey of Activities 2007, [Online]. Available at: <http://www.echr.coe.int/NR/rdonlyres/D0122525-0D26-4E21-B9D4-43AEA0E7A1F5/0/SurveyofActivities2007.pdf> [accessed 7 February 2008].

5 Ibid.