



FREEDOM NOW



HUMAN RIGHTS HOUSE
FOUNDATION

INTIGAM ALIYEV V. AZERBAIJAN

(Application No. 68762/14)

WRITTEN COMMENTS

BY

**HELSINKI FOUNDATION FOR HUMAN RIGHTS, HUMAN RIGHTS
HOUSE FOUNDATION AND FREEDOM NOW¹**

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I. INTRODUCTION

This third party intervention is submitted by the Helsinki Foundation for Human Rights, the Human Rights House Foundation, and Freedom Now pursuant to leave granted by the President of the Chamber of the European Court of Human Rights (Court) under Rule 44 § 2 of the Rules of the Court. This

¹ The opinion was written by Ketevan Abashidze, Florian Irminger, Ane Tusvik Bonde, Alexander Sjödin and Liudmila Ulyashyna from HRHF, Dominika Bychawska-Siniarska and Tomasz Pietrzak from HFHR, Patrick Griffith from Freedom Now; based on some of the materials provided by Natalya Matskevich, a human rights lawyer from Belarus.

communication addresses the detention of activists in Azerbaijan in violation of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention).

At issue in this case is the continued detention of Intigam Aliyev, the prominent lawyer and head of the Azerbaijani NGO the Legal Education Society. In that capacity, I. Aliyev represented victims of human rights abuses and filed dozens of cases currently pending before the Court. The government arrested the Applicant, I. Aliyev, on 8 August 2014 and charged him with tax evasion, illegal business activity, and abuse of authority. The Nasimi District Court authorized the pre-trial detention of I. Aliyev on the day of his arrest and the Baku Court of Appeal upheld the detention order on 13 August 2014. Prosecutors subsequently added charges of forgery and misappropriation. Proceedings in the criminal case are ongoing. Representatives for I. Aliyev submitted an application to the Court regarding his pre-trial detention on 11 November 2014.

The observations contained in the following intervention provide a brief background on the continued crackdown on human rights defenders (HRDs) in Azerbaijan and a substantive explanation of the legal principles implicated in this case. In particular, the comments place the detention of I. Aliyev in the context of the broader limitations on NGOs in Azerbaijan, the efforts by civil society leaders to comply with increasingly restrictive laws, the special regime under international law that protects human rights defenders and individual activists, and the application of pre-trial detention in the overwhelming majority of politically-motivated case.

1. Ongoing repressions against human rights defenders in Azerbaijan

The pattern of systematic and systemic restriction of fundamental rights is well documented in Azerbaijan, especially the right to freedom of association, through arbitrary arrests and detentions. The issue of arbitrary detentions in Azerbaijan has long been a serious concern of CoE institutions. Despite this attention, however, the human rights situation has steadily declined and has reached an unprecedented level.

The Court defined systemic human rights violations as being the ones deriving from structural causes not addressed by authorities.² The lack of executions of judgments concerning violations of these rights is one of the signs underlining the systemic nature of the human rights violations in Azerbaijan.

The targeting of human rights defenders, journalists and activists is nothing new in Azerbaijan. However, in recent years the situation has grown increasingly dire, as evidenced by the nearly complete shut-down of independent human rights organisations, the striking expansion in scope and severity of specious criminal charges used against civil society leaders,³ and the adoption of legislation regulating and controlling NGOs.

2. Reprisal against human rights defenders cooperating with the Council of Europe

Of particular concern is the imprisonment of human rights defenders, journalists and activists who engage with international monitoring mechanisms. Intigam Aliyev, Emin Huseynov, Anar Mammadli, Rasul Jafarov and Khadija Ismayilova are a few of those who intensively cooperated with CoE institutions.

² E.g. Judgment in the case of Broniowski v. Poland of 28 September 2005, application no. 31443/96.

³ The most recent list of politically motivated prosecutions in Azerbaijan was released in August 2014 by HRDs Leyla Yunus and Rasul Jafarov, who are now imprisoned.

The CoE Commissioner for Human Rights raised his concern about the use of reprisals by Azerbaijan, stating that “virtually all the civil society partners of my Office [are detained], which makes it increasingly difficult to work on human rights issues in Azerbaijan”.⁴ Moreover, he noted in his third party intervention in the related case of Hilal Mammadov v. Azerbaijan that:

There is a clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities. This concerns particularly human rights defenders, but also journalists, bloggers and other activists, who may face a variety of criminal charges which defy credibility. Such charges are largely seen as an attempt to silence the persons concerned and are closely linked to the legitimate exercise by them of their right to freedom of expression. *Moreover, these criminal prosecutions often constitute reprisals against those who cooperate with international institutions, including the Council of Europe.*⁵

Furthermore, in its resolution 1571, the Parliamentary Assembly has expressed that “acts of intimidation [in the North Caucasus region of the Russian Federation, Azerbaijan and Moldova] have prevented alleged victims of violations from bringing their applications to the Court, or led them to withdraw their applications.” The Assembly reported on various types of intimidation and reprisals⁶ and acts of intimidation and reprisal against lawyers of applicants to the Court especially in Azerbaijan.⁷

Four of the five lawyers who have been representing I. Aliyev since his detention were removed from the case on 30 September 2014, purportedly due to conflict of interest. They have no right to appeal the decision.⁸

In this regard, Article 34 *in fine* ECHR provides for specific protection against intimidation or reprisal for applicants to the Court. The Court defined that “the expression ‘any form of pressure’ must be taken to cover not only direct coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy.”⁹ Although Article 34 applies *per se* only to the Court, an interpretation which denies protection to those cooperating with other CoE mechanisms, would be contrary to the spirit of the text.

II. LEGISLATIVE FRAMEWORK OF HUMAN RIGHTS DEFENDERS OPERATING IN AZERBAIJAN

⁴Statement of the CoE Commissioner for Human Rights from 24 October 2014; available at: http://www.coe.int/en/web/commissioner/-/azerbaijan-stop-reprisals-against-human-rights-defenders?inheritRedirect=true&redirect=http://www.coe.int/en/web/commissioner/news?p_p_id=101_INSTANCE_easZQ4kHrFrE&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1 (last access 10 March 2015).

⁵ Communicated case Hilal Mammadov v. Azerbaijan of 4 November 2014, application no. 81553/12. (emphasis added)

⁶ Doc. 11183.

⁷ Doc. 12957.

⁸ Web-site of the Human Rights House Foundation: <http://humanrightshouse.org/Articles/20594.html> (last access 10 March 2015).

⁹ E.g. Judgment in the case of Ryabov v. Russia of 1 August 2013, application no. 33774/08.

The ongoing crackdown on civil society in Azerbaijan, including the imprisonment of human rights defenders such as I. Aliyev, is a consequence of the restrictive legislative framework in which independent activists and NGOs must operate. By placing obstacles on the operation and funding of NGOs in Azerbaijan, the authorities are joining a broader global movement of authoritarian governments that are attempting to silence independent voices and curtail fundamental freedoms enshrined in international law. Repeated amendments to the administrative laws regulating NGOs in Azerbaijan, adopted between 2009 and 2014, have come under scrutiny from international bodies and other organizations and received critical reviews and assessments. These widely-criticized laws are now being used to imprison critics and prevent HRDs from conducting human rights efforts inside the country.

1. Legislation hindering the exercise of the right to freedom of association

Since 2009, Azerbaijani authorities have made a series of amendments to its NGO laws which severely limit the ability of NGOs to operate. In two opinions, the European Commission for Democracy Through Law (Venice Commission) found serious breaches in the legislation to Azerbaijan's obligations under the Convention and shortcomings in the laws, especially in regard to the vague formulations and decrees giving full discretionary interpretation to the authorities.¹⁰

The CoE Commissioner has repeatedly addressed the legislation affecting NGOs in Azerbaijan, stating in February 2014, "this new law worsens an already cumbersome situation in which NGO activities were disproportionately restricted. The authorities should alleviate, rather than complicate the administrative requirements for NGOs."¹¹

2. Inability to register NGOs

Government interference with the ability to register NGOs is widespread in Azerbaijan. Although registration is not absolutely required by law¹², it is necessary in order for an NGO to obtain legal status and hence pursue acts with legal consequences, such as opening a bank account.

Such interference is done by prolonging the application process (as opposed to rejecting) with repeated and arbitrary requests for clarification and more documentation. In some cases, NGOs do not receive any response from the Ministry of Justice for years.¹³ The International Center for Non-profit Law recently documented the difficult registration process for domestic and foreign NGOs¹⁴.

10 Opinions no. 636/2011 and 787/2014.

11 Observations of 23 April 2014 available at http://www.coe.int/en/web/commissioner/-/freedom-of-expression-assembly-and-association-deteriorating-in-azerbaijan?inheritRedirect=true&redirect=http%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fcommissioner%2Fcountry-monitoring-azerbaijan%3Fp_id%3D101_INSTANCE_RrDRPKESORE4%26p_p_lifecycle%3D0%26p_p_state%3Dnormal%26p_p_mode%3Dview%26p_p_col_id%3Dcolumn-1%26p_p_col_count%3D1 (last access 10 March 2015).

12 Azerbaijani legislation allowed for the establishment and existence of informal associations (Article 15 of NGO Law), available at: www.icnl.org/research/monitor/azerbaijan.html#analysis (last access 12 March 2015).

13 In 2013 alone, 20 Azerbaijani submitted complaints to the European Court of Human Rights regarding the repeated return of registration application materials, including the Public Association for Democratic Initiatives and Social Development had its application for registration returned on six different occasions over two years. Judgment in the case Aliyev and Others v. Azerbaijan of 18 December 2008, application no. 28736/05.

14 Available at: <http://www.icnl.org/research/monitor/azerbaijan.html#analysis> (last access 12 March 2015).

Although the Court has repeatedly found these significant delays in NGO registration to violate the right to freedom of association,¹⁵ such practice has never ceased, as demonstrated by the cases of Human Rights Club led by Mr. Jafarov, and the Election Monitoring Centre (and later, Election Monitoring and Democracy Studies Centre) chaired by A. Mammadli.

Moreover, the Human Rights House Azerbaijan (HRHA), the registered Azerbaijani branch of the Human Rights House Foundation and as such, member of the international Human Rights House Network, was forced to cease all its activities, following an order of the Ministry of Justice of 10 March 2011. HRHA received neither prior warnings nor any complaints in response to the regular and timely reports provided to authorities.¹⁶

The UN Special Rapporteur on the rights to freedom of association and assembly has emphasized that freedom of association equally protects registered and non-registered associations.¹⁷ To that end, the Court has reiterated “that citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning.”¹⁸

By interfering with the ability of NGOs to register, the government has impermissibly interfered with the ability of these organizations to fully enjoy the right to freedom of association.¹⁹

3. Obligation to register grants

In addition to a legal requirement to register NGOs in order to fully operate, legislation has also been adopted to require NGOs to register grants and funding with officials.²⁰

As analysed by the Venice Commission,²¹ legislation was amended in 2013 to prohibit NGOs from receiving cash donations of more than AZN 200 and established penalties of fines up to AZN 15,000 and confiscation of property²². The legislation also laid down stiff fines for failure to register grant agreements with the Ministry of Justice within the required time period, as well as for failure to include required information about grants in financial reports to authorities.

As a direct consequence, since May 2014, authorities froze the bank accounts of at least 50 independent

15 Judgment in the case *Ramazanova and Others v. Azerbaijan* of 1 February 2007, application no. 44363/02, in case *Ismayilov v. Azerbaijan* of 17 January 2008, application no. 4439/2004, in case *Nasibova v. Azerbaijan* of 18 January 2008, application no. 4307/04 and *Aliyev and Others v. Azerbaijan* of 18 March 2009, application no. 28736/05.

16 Available at: <http://humanrightshouse.org/Articles/16060.html> (last access 10 March 2015).

17 Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kai, U.N. Doc A/HRC/20/27 (May 21, 2012) at 56.

18 Judgment in case *Sidiropoulos and Others v. Greece* of 10 July 1998, application no. 26695/95.

19 For an in-depth analysis of the recent revisions to Azerbaijan’s administrative laws regulating the establishment and operation of non-governmental organizations, see *On the Law on Non-Governmental Organizations (Public Associations and Funds) as Amended of the Republic of Uzbekistan*, European Commission for Democracy Through Law (Venice Commission), Opinion No. 787/2014 (15 December 2014).

20 NGOs are required to provide an application letter and notarized copy of any grant agreement to the Ministry of Justice within 30 days of the date of the grant agreement. Available: www.icnl.org/research/monitor/azerbaijan.html#analysis (latest access 15 March 2015).

21 Opinion 787/2014, paragraph 62 and following.

22 IMS-IRFS 2014: NGO amendments analysis.

organizations and, in many cases, of their staff members, while numerous others have been interrogated and otherwise harassed, forcing them to suspend their activities.

UN has maintained that the right of human rights defenders to form associations and seek financial support to fund their activities is firmly guaranteed: “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with [domestic laws that are consistent with the government’s international obligations].”²³

4. Use of legislation on NGOs to justify detention of human rights defenders

The government of Azerbaijan has recently adopted a strategy of applying vague and perplexing administrative requirements combined with certain criminal laws to imprison HRDs. While this strategy can be confusing when considered at face value, upon further scrutiny the government’s “legal theory” is exposed. These cases have emerged as follows:

First, the government alleges that the NGO has failed to comply with some provision of Azerbaijani administrative law. In particular, the authorities have repeatedly relied on alleged failures to register international grants. In the case of I. Aliyev, his Legal Education Society registered specific grants with the government; however, the government later claimed that grants were not registered. It can also be the result of government intransigence, where organizations try in earnest to comply with all the requirements of the administrative law, but the government simply refuses them unfairly or illegally. An example if this is the case of R. Jafarov and the Human Rights Club. The critical point here is that as a result of purposeful and discriminatory government malfeasance, the leaders of civil society organisations stand accused of failing to meet administrative requirements under the law.

Second, authorities charge the individual NGO leader with unrelated violations of the Criminal Code. For example, the government may begin with the claim that a particular grant was not properly registered. However, the government does not charge the organization or its officers under the relevant administrative laws (which include sanctions that were controversially strengthened but do not include the prospect of imprisonment). Instead, the authorities charge the civil society leaders with unrelated provisions of the Criminal Code, such as laws against illegal business activity, tax evasion, and abuse of office.

Thus, in these cases, the government essentially relies upon the legal theory that administrative code violations, of whatever type, render the activity of the NGO “commercial” thereby subjecting it to a different set of regulatory and tax requirements. The government then accuses the organization’s leadership of failing to comply with the commercial regulations and alleges associated criminal liability.

23 Resolution on HRDs at art 13 (emphasis added). Critically, the Declaration on HRDs does not specify the sources of funding – domestic or international – that defenders may seek. Both the Special Rapporteur on the Situation of Human Rights Defenders and the Special Representative of the Secretary-General on the Situation of Human Rights Defenders have affirmed that defenders should be allowed to obtain funding from abroad. *Report of the Special Rapporteur on the Situation of Human Rights Defenders*, U.N. Doc A/66/203 (July 28, 2011) at p. 70; *Report of the Special Representative of the Secretary-General on the Situation of Human Rights Defenders*, UN Doc A/59/401 (Oct 1, 2004) at p. 82. For additional information on the right of NGOs to international funding, see *Violations of the Right of NGOs to Funding: from harassment to criminalization*, OMCT and FIDH (2013), available at <https://www.fidh.org/International-Federation-for-Human-Rights/human-rights-defenders/annual-reports/obs-annual-report-2013-violations-of-the-right-of-ngos-to-funding-from-12892> (last access 10 March 2015).

Generally, the authorities cannot, upon their discretion, change the tax regime from the non-for-profit to commercial even if there is a failure to comply with some provisions, specifically, if the noncompliance results into a criminal sanction. After a close examination, it becomes clear that the use of organisational charges, like the use of allegedly politically motivated charges, are a blatant attempt to put independent NGOs out of operation and punish their leaders.

III. INTERNATIONAL FRAMEWORK FOR THE PROTECTION OF HRD

1. General framework

The concept of a HRD²⁴ is enriched in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, unanimously adopted by the UN General Assembly on 9 December 1998 (the Declaration). It underlines the role of HRDs at the local, national, regional and international levels in the promotion and protection of human rights. The UN General Assembly and Human Rights Council (or previously the Commission on Human Rights) have since regularly adopted by unanimity resolutions reaffirming the rights related to the work and activities of human rights defenders, most lately a resolution on the protection of human rights defenders and one on women human rights defenders.²⁵

In 2008, the Committee of Ministers adopted a Declaration on the protection of human rights defenders.²⁶ In particular, the CoM called on CoE Member States to “create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities [...] to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the [Convention ... and] “to take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities”.²⁷ Moreover, as a mean to enhance their protection, both the UN and PACE established rapporteurs on the situation of HRDs.

24 Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organisations such as associations or foundations. Anyone, regardless of their occupation, can be a human rights defender; they are identified primarily by what they do rather than by their profession.

25 Respectively, Human Rights Council resolution 22/6 of 21 March 2013 and General Assembly resolution 68/181 of 18 December 2013.

26 Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted by the Committee of Ministers on 6 February 2008 at the 1017th meeting of the Ministers' Deputies.

27 Paragraphs 2.i and 2.ii.

In the specific context of arbitrary detention, the imprisonment of HRDs should be subjected to heightened scrutiny. The UN Working Group on Arbitrary Detention states the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review”²⁸. Whilst finding the detention of the Belarusian HRD Ales Beliatki to be arbitrary, the UN Working Group on Arbitrary Detention took the UN framework on HRDs into account:

[T]here is no immunity for human rights defenders against criminal charges [...]. However, government action has to respect the exercise of human rights, and Governments have specific duties to protect human rights defenders against different forms of harassment that they may encounter [...]. When there are claims of human rights violations in this context, including a pattern of harassment, domestic authorities and international supervisory bodies should apply the heightened standard of review of government action.²⁹

Therefore, when dealing with the complaints of HRDs, it is necessary to examine the facts of the case in which HRDs work, and assess whether they enjoy the protection under the established principles, in the given context.

Due to his work, I. Aliyev qualifies as an HRD. He works in the context of an unprecedented repression against civil society in Azerbaijan. For his efforts in promotion of human rights and democracy in Azerbaijan he was awarded in 2012 with the Homo Homini Award by the Czech human rights organisation *People in Need*³⁰. Consequently, the interveners argue that based on the established UN practise, the circumstances laid out in the application of I. Aliyev to the Court, should be assessed by applying the “heightened standard of review”.

2. Special status of lawyer human rights defender

Apart from the obligations relating to HRDs, Azerbaijan has additional obligations towards I. Aliyev, as a practising lawyer before the Court, namely:

To ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference and that they do not suffer from prosecution or administrative and other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.³¹

According to the international standards and due to the principle of non-discrimination, guarantees and immunities recognised for lawyers shall be applied to persons who exercise the function of lawyers without having the formal status of lawyers.³²

28 *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012 (Nov. 21, 2012) at par. 40; *Nasrin Sotoudeh v. Islamic Republic of Iran*, UN Working Group on Arbitrary Detention, Opinion No. 21/2011, U.N. Doc. A/HRC/WGAD/2011/21 (2011), 27 February 2012, par. 29.

29 *Aleksandr Viktorovich Bialatski v. Belarus*, UN Working Group on Arbitrary Detention, Opinion No. 39/2012, U.N. Doc. A/HRC/WGAD/2012/39 (2012), par. 45.

30 <http://www.clovekvtisni.cz/en/human-rights/info/homo-homini-award> (last access: 13.03.2015).

31 Recommendation No R(2000)21 of the Committee of Ministers to Member States on freedom of exercise of the profession of lawyer (adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies), Basic Principles on the Role of Lawyers, 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.

32 Par. 11 of the Preamble of the Basic Principles on the Role of Lawyers.

I. Aliyev has strived for the legal protection of victims of human rights violations for more than 15 years and has to date represented them in proceedings before the Court in more than 200 cases (around 40 cases are currently awaiting decision). When he was detained, he was defending more than 140 people in the Court. By depriving him as a human rights lawyer of his liberty, the Azerbaijani authorities also hinder their citizens to appeal and seek justice before the Court.³³

We note in this regard that the CoM requested “detailed information on all criminal charges pending against I. Aliyev,”³⁴ which is indeed a sign of its dismay over this detention.

IV. APPLICATION OF PRE-TRIAL DETENTION WITH POLITICAL MOTIVES

The pre-trial detention of I. Aliyev for three months as ordered by the court on 8 August 2014, resembles similar cases brought to the Court against Azerbaijan, such as *Ilgar Mammadov v. Azerbaijan*³⁵, *Farhad Aliyev v. Azerbaijan*³⁶ and *Muradverdiyev v. Azerbaijan*³⁷. In all cases, a violation of Article 5 of the Convention concerning arrest and detention on remand was found to have occurred by the Court and not a single one of these judgements has been implemented by the government. The pre-trial detention in the case of I. Aliyev has already been prolonged on several occasions since August 2014. On 17 February 2015, during the hearing of I. Aliyev before the Baku Grave Crimes Court, the motion of the defense to replace pre-trial detention with house arrest was dismissed. Further, the three-month period expired and was not renewed until 9 days later. As a matter of practice, pre-trial detention periods in politically motivated cases in Azerbaijan are lengthy. To illustrate, newspaper editor Avaz Zeynalli was held in pretrial for 17 months without legally sufficient justification.

In the judgement *I. Mammadov v. Azerbaijan*, the Court recognized that a link between a violation of Article 5 of the Convention and an alleged violation of Article 18 is very difficult to prove. The Court can assess the admissibility of such a claim only in connection with complaints of other Article violation. In the present case, the complaint under Article 18 is motivated by the precedents made by previous cases of violation of Article 5 by the Azerbaijani authorities. A similarity of circumstances in the cases of *I. Mammadov* and *I. Aliyev* – both of them are commentators and critics of the Azerbaijani government and political activists of high social influence and in both cases the domestic authorities dismissed the appeals and complaints of the applicants – provides analogical basis of behaviour of the Azerbaijani judiciary toward activists in opposition to the government.

The careless application of the pre-trial detention order in light of I. Aliyev’s previous behaviour gives no basis for the government’s claim of “reasonable suspicion” against him. In fact, it raises doubts as to whether the Azerbaijani judiciary takes objective decisions. As in previous cases mentioned, the domestic court failed to provide sufficient justification for such a detention of applicants. This fact let us assume that the authorities are not acting in good faith and have a different political agenda. I. Aliyev is a well-known human rights defender and a social activist and was perceived by the Government as a dissident. The lack of convincing evidence combined with the failure of the court to verify the reasonableness of the suspicion underpinning I. Aliyev’s arrest, constitutes a common practice of the Azerbaijani judiciary, which has been condemned by the Court in numerous judgments.

³³The Committee of Ministers of the Council of Europe requested “detailed information on all criminal charges pending against [Intigam Aliyev],” which is indeed a sign of its dismay over this detention <http://humanrightshouse.org/Articles/20559.html> (latest access 12 March 2015).

³⁴ See: <https://wcd.coe.int/ViewDoc.jsp?id=2239635&Site=CM> (last access 10 March 2015).

³⁵ Judgment in case *Ilgar Mammadov v. Azerbaijan* of 22 May 2014, application no. 15172/13.

³⁶ Judgment in case *Farhad Aliyev v. Azerbaijan* of 9 November 2010, application no. 37138/06.

³⁷ Judgment in case *Muradverdiyev v. Azerbaijan* of 9 December 2010, application no. 16966/06.

The political nature of the arrests of HRD in Azerbaijan, including the arrest of I. Aliyev, has been recognized by international organizations and political leaders across Europe. A number of parliamentarians, including Mailis Reps (Estonia, ALDE), Council of Europe Parliamentary Assembly (PACE) rapporteur on ‘Strengthening the role and protection of human rights defenders in Council of Europe member States’ highlighted on various occasions the political nature of the detention:

I am very worried about various intimidation measures being taken against human rights defenders, other civic activists, journalists and bloggers – such as arbitrary arrests, unfair trials on fabricated charges and even the use of torture in custody. Some of these measures also target our long-term friends and collaborators, including human rights defender Leyla Yunus, who is under constant judicial and administrative harassment, Anar Mammadli, head of the prominent watchdog Election Monitoring and Democracy Studies Centre or Ilgar Mammadov, director of the Baku School of Political Studies sponsored by the Council of Europe – both have recently been convicted to long-term prison sentences on the basis of politically motivated charges³⁸.

The Commissioner of Human Rights also expressed his concerns as to the political nature of arrests on various occasions. On 23 April 2014 the Commissioner appealed: Unjustified and selective criminal prosecution of people expressing dissenting views, including journalists, bloggers and activists, continues unabated. This is unacceptable. All those who are detained because of the views they expressed must be released³⁹.

V. SEARCH AT THE APPLICANT’S OFFICE VIOLATING ART. 8 OF THE CONVENTION

I. Aliyev complained under Article 8 of the Convention that his right to respect for his private and family life, his home and his correspondence was violated because his home and office were searched. Moreover, he claimed that the search accompanied by a seizure of all the documents and electronic items was unlawful. I. Aliyev claims that the Azerbaijani authorities went into his private facilities to make a search and did not register the seized items. As it was raised by the Court in the judgment *Buck v. Germany* and a number of other cases, the private sphere of the individual, includes not only his home but also can be extended to the office, registered branches and other business premises as well⁴⁰.

It has to be determined whether the search of I. Aliyev’s office constituted a justified interference under Article 8 (2) of the Convention. That means, if it was conducted “in accordance with the law” and in a “legitimate aim” and if it was “necessary in a democratic society”. As reported in the statement of facts, although the search was conducted on the basis of a decision of the Nasimi District Court and in the presence of the Applicant’s lawyer and two witnesses, the investigator seized all document found in the office of I. Aliyev, including case files and document relating to the applications pending before the Court and domestic courts. The seized documents were not registered in any inventory so it is difficult to trace, what has been taken by the authorities. Such a seizure constitutes a violation of the legal

38 Statement available at: <http://assembly.coe.int/nw/xml/News/News-View-EN.asp?newsid=5080&lang=2&cat=5> (last access 12 March 2015).

39 Statement available at: <http://www.coe.int/en/web/commissioner/-/freedom-of-expression-assembly-and-association-deteriorating-in-azerbaijan> (last access 12 March 2015).

40 Judgment in case *Buck v. Germany* of 28 April 2005, application no. 41604/98, par. 31.

professional privilege of Mr. Aliyev and may have a negative impact on the legal proceedings of his clients, which were left without legal help and could not access documents in their cases. Moreover, the investigation and seizure of documents was conducted without any representatives of the local Bar Association⁴¹, to verify the search respected the legal privileges and professional ethics of Mr. Aliyev and his clients.

As stated in the judgment of the Court in the case *Michaud v. France*⁴² the legal profession has a unique ethical responsibility and preserving its independence and confidentiality is one of the most important principles of conduct of this profession. A well-established Court's case-law and internationally acknowledged documents such as the Code of Conduct for European Lawyers and the Basic Principles on the Role of Lawyers, stress the confidentiality of lawyer-client exchanges:

It is of the essence of a lawyer's function that the lawyer should be told by his or her client things which the client would not tell to others, and that the lawyer should be the recipient of other information on a basis of confidence. Without the certainty of confidentiality there cannot be trust. Confidentiality is therefore a primary and fundamental right and duty of the lawyer. The lawyer's obligation of confidentiality serves the interest of the administration of justice as well as the interest of the client. It is therefore entitled to special protection by the State⁴³.

The further criterions, "the legitimate aim" and "necessity in a democratic society" were as well not fulfilled by the investigators in the case of the search, because of the disproportional character to the intended aim. At the time of the search I. Aliyev was interrogated in the Prosecutor General's Office and his cooperative behavior did not foreshadow any problems with access to the documents of the Legal Education Society. In such a situation, Azerbaijan failed to assess other possibilities to conduct the investigation, with the application of less invasive measures, in order to protect the I. Aliyev's and his client's right to privacy.

VI. CONCLUSIONS

HRDs in Azerbaijan are operating in an environment unfriendly and hostile to civil society. Legal entities – Associations - established by HRDs are often denied (or *de facto* denied) registration and obstructed from receiving funding. The legal framework concerning NGOs is strengthening, despite the international criticism, and is used more often as an instrument of repression against civil society leaders. Many HRDs, including the I. Aliyev, have been detained as a result of overly restrictive and vague laws regarding the operation of NGOs and prosecuted under specious criminal charges.

These actions by the Azerbaijani authorities stand in clear opposition to Article 5 (combined with Article 18) and Article 11 of the Convention. The Court has denounced these actions in a number of judgments. However, the Azerbaijani authorities have continued unabated; targeting NGOs leaders, including Mr. Aliyev. The ongoing crackdown demonstrates the impunity of the Government and the lack of respect towards international obligations.

41 Judgment in case *Roemen and Schmit v. Luxembourg* of 25 February 2003, application no. 51772/99.

42 Judgment in case *Michaud v. France* of 6 December 2012, application no. 12323/11.

43 Code of Conduct for European Lawyers, Council of Bars and Law Societies in Europe, 2008.

Moreover, such a practice contravenes the special regime of protection of HRD developed in a number of international organizations documents, but also countries guidelines. The civil society crackdown demonstrated how weak such a regime of protection is. Taking into consideration the fact that the international documents proved an insufficient protection for HRD operating in Azerbaijan, we believe there is a great role of the Court in granting protection to I. Aliyev.

On behalf of the Helsinki Foundation for Human Rights, the Human Rights House Foundation and Freedom Now,



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