

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL

UNITED NATIONS GENERAL ASSEMBLY

In the Matter of

Adnan Hajizade and Emin Milli (Abdullayev)

Citizens of Azerbaijan

v.

Government of Azerbaijan

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, and 6/4

Submitted By:

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December 30, 2010

MODEL QUESTIONNAIRE

I. IDENTITY OF THE PERSONS ARRESTED OR DETAINED

Adnan Hajizade

1. ***Family name:*** Hajizade (also commonly spelled in English as “Hajizada”)
2. ***First name:*** Adnan
3. ***Sex:*** Male
4. ***Birth date:*** July 13, 1983
5. ***Nationality/Nationalities:*** Republic of Azerbaijan
6. ***(a) Identity document (if any):*** Not Available
(b) Issued by:
(c) On (date):
(d) No.:
7. ***Profession and/or activity (if believed to be relevant to the arrest/detention):***

Adnan Hajizade (also spelled “Hajizada”) is a political activist and founding member of the OL! Azerbaijani Youth Movement, a non-violent group that promotes youth education and development.¹ Hajizade has served on the group’s Executive Board and as its External Affairs Coordinator.² Known throughout Baku as a vocal critic of the government, Hajizade is a youth leader and active member of civil society. He also protested the reputedly unfair results of the parliamentary elections of 2005.³ Hajizade draws on principles of the pre-Soviet Azerbaijani Democratic Republic in urging political activism among Azerbaijani youth.⁴

Hajizade is also a producer of activist videos.⁵ In June 2009, Hajizade created and posted a satirical video of a donkey holding a press conference on both his personal video blog internet site⁶ and on the OL! video blog internet site.⁷ The video mocks the Azerbaijani government’s

¹ Adnan Hajizade and Emin Milli’s Blog, <http://adnanemin.wordpress.com/about> [hereinafter About Blog].

² *Id.*

³ *Id.*

⁴ See Mina Muradova, *Azerbaijan: Youth Groups Look to Pre-Soviet Past to Build Democratic-Secular Future*, EurasiaNet.org, May 28, 2009, <http://www.eurasianet.org/departments/insightb/articles/eav052909b.shtml>.

⁵ Reuters, *Families of Jailed Azeri Bloggers Appeal to Obama*, Euronews, Sept. 09, 2010 [hereinafter *Families*], <http://www.euronews.net/newswires/491379-families-of-jailed-azeri-bloggers-appeal-to-obama/>.

⁶ Adnan Hajizade, Video Blog, <http://www.youtube.com/fuserlimon>.

⁷ See *Families*, *supra* note 5. The OL! video blog website can be found at: www.youtube.com/olmedia.

purchase of two donkeys for over \$20,000 each while health care and human rights are neglected. Hajizade not only created the video and posted it online, but also starred in it—dressed in a large donkey costume.⁸ Hajizade was arrested 10 days following the video’s online posting.

This petition thus refers to Hajizade, as well as to Milli, simply as a “blogger.”

8. ***Address of usual residence:*** 14 Bul-Bul prospect 9, Baku, AZ 1000

Emin Milli

1. ***Family name:*** Milli⁹
2. ***First name:*** Emin
3. ***Sex:*** Male
4. ***Birth date:*** October 14, 1979
5. ***Nationality/Nationalities:*** Republic of Azerbaijan
6. ***(a) Identity document (if any):*** Not Available
(b) Issued by:
(c) On (date):
(d) No.:
7. ***Profession and/or activity (if believed to be relevant to the arrest/detention):***

Emin Milli has worked as a coordinator for the International Republican Institute (IRI),¹⁰ the director of the Friedrich Ebert Foundation (FES),¹¹ and has advised the Council of Europe on legal matters relating to political prisoners.¹² Milli is outspoken in his criticism of the Azerbaijani government and was particularly active in opposing its recent crackdown on foreign broadcast radio and in critiquing the 2009 constitutional referendum to eliminate presidential

⁸ Application to the European Court of Human Rights, Jan. 18, 2010 [hereinafter ECHR Application] (on file with Freedom Now); see also Ellen Barry, *In Azerbaijan, a Donkey Suit Provokes Laughs and, Possibly, Arrests*, N.Y. TIMES, July 15, 2010, available at http://www.nytimes.com/2009/07/15/world/asia/15azerbaijan.html?_r=1.

⁹ Emin Milli is also known as Emin Abdullayev.

¹⁰ The IRI is a U.S.-government-funded organization, the mission of which is to advance democracy around the world. Senator John McCain is its chairman; Lawrence Eagleburger, Brent Scowcroft, and Senator Lindsay Graham are among its current board of directors.

¹¹ The FES is a German organization affiliated with the Social Democratic Party that promotes democracy and international cooperation.

¹² About Blog, *supra* note 1.

term limits.¹³ Four days before his arrest, Milli spoke at a roundtable discussion about democratization in Azerbaijan at which he strongly criticized the Azerbaijani government.¹⁴ He is a founder of Alumni Network (AN), an early social networking group for Azerbaijani youth that advocates non-violent political advocacy.¹⁵ Milli is additionally known for incorporating “new media”¹⁶ into his political activism, including posting articles online and writing blog posts.¹⁷ Milli was the principal distributor of the donkey video produced by his friend Hajizade.¹⁸

This petition thus refers to Milli, as well as to Hajizade, as a “blogger.”

8. Address of usual residence: 9 N. Narimanov prospect 25, Baku AZ 10000.

II. ARREST OF ADNAN HAJIZADE AND EMIN MILLI¹⁹

1. Date of arrest: July 8, 2009

2. Place of arrest (as detailed as possible): The 9th Division Station of Sabail District Police Department in Baku, Azerbaijan

3. Forces who carried out the arrest or are believed to have carried it out: The Baku Police Department. Hajizade and Milli went to the 39th Division Station of Sabail District Police Department in Baku to report an assault. Authorities at the station directed Hajizade and Milli to the 9th Division Station, where they were detained as suspects instead of being treated as victims of a crime.

4. Did they show a warrant or other decision by a public authority?

No. On July 8, 2009, Baku City police detained Hajizade and Milli. On July 13, 2009, Judge Rauf Ahmadov of Sabail District Court issued a decision sentencing Hajizade and Milli to two months pre-trial detention, the longest period permitted under Azerbaijani law, pending their trial for “domestic group hooliganism” under Article 221.2 of the Azerbaijani Criminal Code.²⁰

¹³ About Blog, *supra* note 1; see also Amnesty International, *Ensure Convicted Azerbaijani Bloggers Receive Fair Appeal Hearing*, July 13, 2010, www.amnesty.org/en/node/17629.

¹⁴ Azerbaijani Youth Club, *The Story of Two Young Bloggers in Azerbaijan: Emin and Adnan* [hereinafter *Story of Two Bloggers*], <http://azeryouth.org/index.php/articles/3013-The-Story-Two-Young-Bloggers-Azerbaijan-Emin-and-Adnan.html>; see also <http://ol-az.blogspot.com/2008/11/manifesto-for-change-in-azerbaijan.html>.

¹⁵ OL! Blog, <http://ol-en.blogspot.com/2009/07/who-is-emin-milli.html>.

¹⁶ “New media” utilizes interactive media, such as web pages, to maximize the dispersal of information while encouraging active participation. Components may include: online communities, e-mail and listserves, streaming audio and video, uplinks to add personally-shot audio and video, or live internet broadcasts.

¹⁷ About Blog, *supra* note 1.

¹⁸ Source redacted.

¹⁹ Because the facts and circumstances surrounding Milli and Hajizade’s arrest and detention are substantially the same, the remainder of this petition presents only one narrative.

²⁰ Institute for Reports Freedom and Safety, *Emin Milli and Adnan Hajizade Sentenced to Pre-Trial Detention*, Oct. 7, 2009, <http://www.irfs.az/content/view/2578/2/lang,eng/>; Ali S. Novruzov, *Beaten Activists Sentenced for Two*

The judge's sentencing order, however, failed to state a "sufficient basis" for Hajizade and Milli's pretrial detention, as required by Azerbaijani law.²¹

5. **Authority who issued the warrant or decision:** Judge Rauf Ahmadov of Sabail District Court

6. **Relevant legislation applied (if known):** Articles 221.2, "domestic group hooliganism," and 127, "deliberately inflicting minor bodily harm," of the Azerbaijani Criminal Code.

III. DETENTION

1. **Date of detention:** July 8, 2009 (convicted and sentenced on November 11, 2009)

2. **Duration of detention (if not known, probable duration):** The bloggers were detained for over a year and four months and were expected to be detained until July 10, 2011 (Hajizade) and January 10, 2012 (Milli). The Baku Appeal Court, however, issued a decision conditionally releasing Adnan Hajizade on November 18, 2010. It similarly released Emin Milli on conditional release on November 19, 2010.

3. **Forces holding the detainee under custody:** Hajizade and Milli were held by the Ministry of Internal Affairs of the Azerbaijani Government. As both men's release is conditional, they are at risk for being held again by the Ministry of Internal Affairs under the same charges.

4. **Places of detention (indicate any transfer and present place of detention):** Hajizade was imprisoned at Azerbaijan's Prison No. 14 in Guzdek (Gizildash). Milli was imprisoned in Prison No. 5 in Khalaj (Salyan).

5. **Authorities that ordered the detention:** Sabail District Court, Baku City, Azerbaijan.

6. **Reasons for the detention imputed by the authorities:** After initially being charged with "domestic group hooliganism," Hajizade and Milli were sentenced to two months of pre-trial detention. After their conviction for hooliganism and infliction of minor bodily harm, Hajizade and Milli were sentenced to two and two-and-a-half year sentences, respectively, for "domestic group hooliganism" under Article 221.2 of the Azerbaijani Criminal Code and "deliberately inflicting minor bodily harm" under Article 127 of the Azerbaijani Criminal Code.

7. **Relevant legislation applied (if known):** Articles 221.2, "domestic group hooliganism," and 127, "deliberately inflicting minor bodily harm," of the Azerbaijani Criminal Code.

Months While Investigation Goes On, Frontline Blog, <http://frontlineclub.com/blogs/alisnovruzov/2009/07/beaten-activists-sentenced-for-two-months-while-investigation-goes-on.html>.

²¹ Complaint, Baku Court of Appeal, ¶¶ 25–26, undated [hereinafter Appellate Complaint] (on file with Freedom Now).

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY

I. Statement of Facts

Part A of this section discusses Azerbaijan and its documented history of arbitrary detention and political suppression. Part B presents the case of the Petitioners, Adnan Hajizade and Emin Milli, Azerbaijani bloggers and political activists who were arbitrarily detained by their government for more than a year.

A. The Republic of Azerbaijan and its History of Arbitrary Detention and the Suppression of the Freedom of Speech and Press

1. Background Information on the Republic of Azerbaijan

After the collapse of the Russian Empire in 1917, Azerbaijan became the first democratic republic in the Muslim world.²² It became a union republic of the U.S.S.R. in 1936.²³ The republic experienced increasing unrest during the 1980s, culminating in a violent January 1990 confrontation between Soviet troops and nationalist demonstrators that left 190 dead in the capital, Baku.²⁴ Azerbaijan declared its independence on August 30, 1991.²⁵ The majority of its population is Shia Muslim; the Azerbaijani government is secular.²⁶

2. Azerbaijan's Political and Judicial Climate

Azerbaijan's government consists of three branches, but the executive dominates the judicial and legislative branches.²⁷ Heydar Aliyev became the country's third president in August 1993.²⁸ He then won a second five-year term in 1998.²⁹ In elections marred by procedural irregularities, his son Ilham Aliyev was also elected to two terms, in 2003 and 2008.³⁰ In a March 18, 2009 referendum—the subject of only minimal public debate—the public voted to amend the Azerbaijani constitution to abolish presidential term limits.³¹ Like the presidential elections, monitors observed procedural deficiencies in the referendum, including errors in the vote-

²² *Free, Fair, & Regular Elections: Country Studies - Azerbaijan*, Democracy Web: Comparative Studies in Freedom [hereinafter Free, Fair], available at <http://www.democracyweb.org/elections/azerbaijan.php>.

²³ U.S. Department of State, *Background Note: Azerbaijan*, June 14, 2010 [hereinafter DOS Background Note].

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

counting process.³² The European Commission has reported that the expansion of executive power embodied in this amendment “signal[s] a serious setback on Azerbaijan’s road to consolidated democracy.”³³ As noted above, Emin Milli was a vocal opponent of this amendment.³⁴

Although Azerbaijani law provides for an independent judiciary, “in practice judges [do] not function independently of the executive branch.” The judiciary is “corrupt and inefficient,” and verdicts are “largely unrelated” to the evidence presented at trial.³⁵

3. Azerbaijan’s Lack of Media Freedom

The human rights situation in Azerbaijan is poor, particularly in the areas of media, religious, and political freedom. In recent years, political space for opposition voices has become increasingly constricted.³⁶ The country has experienced a general increase in the repressive crackdown on journalists.³⁷ The March 2009 referendum that abolished presidential term limits also made a number of changes that limited media freedom, including adding a prohibition on videotaping or photographing anyone without his or her permission.³⁸ Recent changes to the law have also made it easier for the government to shutter a publication.³⁹ In 2010, Reporters Without Borders added President Ilham Aliyev to its list of “Predators of Press Freedom,” which lists the top 40 “politicians, government officials, religious leaders, militias and criminal organizations that cannot stand the press, treat it as an enemy and directly attack journalists.”⁴⁰

The government’s crackdown on dissent has taken many forms, including an increasing pattern of the harassment of journalists, the failure to investigate crimes against them, and the conviction of journalists on dubious charges.⁴¹ For example, the 2005 assassination of prominent journalist and newspaper editor Elmar Huseynov remains unresolved amid allegations of

³² *Id.*

³³ European Commission, *Implementation of the European Neighbourhood Policy: Progress Report Azerbaijan*, May 12, 2010 [hereinafter EC Report], at § 2.

³⁴ About Blog, *supra* note 1.

³⁵ U.S. Department of State, 2009 Human Rights Report, Mar. 11, 2010 [hereinafter DOS Country Report], available at <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136020.htm>.

³⁶ *Id.*

³⁷ Amnesty International, *Azerbaijan: Continuation of Crackdown on Dissent*, Mar. 5, 2010 [hereinafter Amnesty, Crackdown], available at <http://www.amnesty.org/en/library/asset/EUR55/001/2010/en/1461e804-0fd4-499c-8ab9-34e71fab090/eur550012010en.html>; EC Report, *supra* note 33, at § 2.

³⁸ DOS Country Report, *supra* note 35.

³⁹ *Id.*

⁴⁰ Reporters Without Borders, *Forty Predators of Press Freedom*, May 3, 2010, <http://en.rsf.org/predators2010-03-05-2010,37235.html>.

⁴¹ Amnesty International, *Independent Journalists Under Siege*, June 2009 (AI Index: EUR/55/004/2009) [hereinafter Amnesty Report], available at <http://www.amnesty.org/en/library/asset/EUR55/001/2010/en/1461e804-0fd4-499c-8ab9-34e71fab090/eur550012010en.html>.

government involvement.⁴² A state media support fund established in 2008 to assist newspapers announced its first cash grants in 2009; many commentators criticize the fund as an attempt to further hobble an already-restricted press with financial subsidies.⁴³

Hajizade and Milli, moreover, are not the only journalists to be jailed on “hooliganism” charges. As reported by the U.S. State Department and other sources, numerous journalists have been harassed or detained in connection with their work in recent years.⁴⁴ In 2008, Ganimat Zahid (Zakhidov), editor-in-chief of the opposition paper *Azadliq* (*Azadlyg*), was convicted and sentenced to four years in prison on identical charges arising from similar circumstances.⁴⁵ In January 2010, the Court of Appeals upheld a suspended two-year sentence for Makhmal Ismailoglu, the former editor of *Khalg*, an Azerbaijani newspaper. The charges against Ismailoglu were identical to those for which Hajizade and Milli were convicted.⁴⁶

B. The Arbitrary Detention of Adnan Hajizade and Emin Milli

1. Political Activists Known for Criticism of the Government

a) Adnan Hajizade

Adnan Hajizade traveled to the United States for college, graduating from the University of Richmond.⁴⁷ After returning to Baku, Hajizade earned a bachelor degree in law from Khazar University.⁴⁸ He helped found the OL! Azerbaijani Youth Movement, a non-violent group that promotes youth education and development, and served on the group’s Executive Board.⁴⁹ Hajizade also worked as an Internal Communications Officer in British Petroleum (BP) Azerbaijan’s Communications and External Affairs Department.⁵⁰

⁴² *Id.*; see also Anna Zamejc, *Five Years Later, Elmar Husseynov's Murder Goes Unsolved*, Radio Free Europe, Mar. 2, 2010, available at http://www.rferl.org/content/journalists_in_trouble_Five_years_Later_Elmar_Husseynovs_Murder_Goes_Unsolved/1972644.html; World Association of Newspapers, *Press Freedom World Review - January–September 2010*, Oct. 4, 2010, available at <http://www.wan-press.org/article18653.html>.

⁴³ DOS Country Report, *supra* note 35.

⁴⁴ See *id.* (recounting that during 2009 several journalists had been imprisoned and that “numerous journalists reported physical attacks in connection with their professional activity”); see also Amnesty Report, *supra* note 41.

⁴⁵ Committee to Protect Journalists, *Azerbaijani Editor Zakhidov Freed; 3 Journalists Still Jailed*, Mar. 19, 2010 [hereinafter CPJ Appeal], <http://cpj.org/2010/03/azerbaijani-editor-zakhidov-freed-3-journalists-st.php>. In connection with the 2010 Azerbaijani New Year, President Ilham Aliyev unexpectedly pardoned Zakhidov after he had served more than half of his sentence. He did not, however, pardon Hajizade or Milli.

⁴⁶ Irada Guseinova, *Weekly Bulletin of Events in Mass-Media of CIS Countries*, Center for Journalism in Extreme Situations, Jan. 1–17, 2010.

⁴⁷ About Blog, *supra* note 1.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

As mentioned above, Hajizade produced many satirical videos in conjunction with his work with OL!⁵¹ His last work was the donkey video, which he both starred in and produced.⁵² It appeared on his video blog on June 28, 2009, only 10 days prior to his arrest and detention.⁵³ After he posted the video criticizing his government, Hajizade told his father that he felt he was being followed.⁵⁴ Since the arrest, detention, and conviction of the two activists and social media bloggers, the weight of international opinion is that the government targeted Hajizade for his creation and dissemination of the critical video.⁵⁵

b) Emin Milli

Emin Milli is a graduate of Baku State University and the University of Saarbruecken European Law School (Germany). Milli is a well-known spokesman for democracy within Azerbaijan and an outspoken critic of the Azerbaijani government. He has worked as a coordinator for several organizations dedicated to the promotion of democracy, including the U.S.-based International Republican Institute and the Friedrich Ebert Foundation. In the 2005 elections, he worked as a political analyst assistant in the OSCE/ODIHR Election Observation Mission in Azerbaijan.⁵⁶ Additionally, Milli served as an advisor to the Council of Europe on legal matters relating to political prisoners.⁵⁷ Milli has also worked as the interpreter for the German Federal Commissioner for Human Rights and Foreign Aid Ombudsman.⁵⁸ He was scheduled to work with the Commissioner the day following his arrest.⁵⁹

Milli also founded an early social networking group, Alumni Network (“AN”), to advocate for non-violent civic activism on the part of Azerbaijani youth.⁶⁰ This “new media” group also encourages information sharing in a nation where the government increasingly controls the media. While AN is non-political, part of its goal is to allow Azerbaijani youth to learn from each other free from a government-set agenda.

In the months prior to his arrest, Milli became increasingly outspoken in his criticism of the government. Milli publicly opposed the 2009 constitutional amendments to eliminate presidential terms and openly criticized the government for its recent crackdown on foreign broadcast radio.⁶¹ He worked to increase international pressure on the Azerbaijani government in

⁵¹ *Id.*

⁵² Barry, *supra* note 8.

⁵³ ECHR Application, *supra* note 8, ¶ 2.

⁵⁴ *Id.*

⁵⁵ See Muradova, *supra* note 4; Barry, *supra* note 8; Amnesty Report, *supra* note 41.

⁵⁶ About Blog, *supra* note 1.

⁵⁷ *Id.*

⁵⁸ *The Story of Two Bloggers*, *supra* note 14.

⁵⁹ *Id.*

⁶⁰ About Blog, *supra* note 1.

⁶¹ *Id.*

order to force it to rescind its position on both issues.⁶² Both Hajizade and Milli promoted a 2008 rally which focused on increasing democratic participation and exposing Azerbaijani youth to the country's heritage.⁶³ Four days before his arrest, Milli spoke at a roundtable discussion about democratization in Azerbaijan at which he strongly criticized the Azerbaijani government.⁶⁴ Milli was well-known in Baku and Azerbaijan-at-large as a social-media blogger active in promoting human rights. He was also the primary distributor of Hajizade's critical videos, including the Donkey video.

In sum, Hajizade and Milli have been outspoken critics of the Azerbaijani government since the mid 2000s. Azerbaijan has a history of repressing free speech and targeting journalists and bloggers. A little over a week after presenting another critique of the Azerbaijani government in the form of the donkey video and four days after the roundtable in which Milli participated, Hajizade and Milli walked into a police station to report a crime. Instead, they were detained, interrogated, charged, convicted, and imprisoned.

2. Arbitrary Arrest and Pre-Trial Detention

Hajizade and Milli were dining with friends—five including the bloggers—and discussing politics on July 8, 2009, in a downtown Baku restaurant called “Lebanese” when two men, Babak Islam Huseynov and Vusal Saleh Mammadov, entered the restaurant and sat at a nearby table.⁶⁵ Upon hearing the group's criticism of the government, Huseynov swore at them and asked what they were talking about. Met with silence, Mammadov approached Emin Milli and “butted him at his head and knocked him down.”⁶⁶ When Hajizade approached, Mammadov quickly butted his head as well, knocking him down and kicking him on the ground.⁶⁷ Both men sustained injuries. Milli's “leg was gashed with [a] piece of glass” after he fell and Hajizade's face was “swollen to [an] unrecognizable condition as a result of inflicted injuries by [Mammadov].”⁶⁸

After they were attacked and severely injured, Hajizade and Milli went to the police station to file a complaint. Authorities at this station directed them to another station, where authorities questioned them first as witnesses, then as suspects.⁶⁹ Their attackers, Huseynov and Mammadov, were also brought into the station for questioning. Soon thereafter, however, the

⁶² *Id.*

⁶³ See Muradova, *supra* note 4.

⁶⁴ Novurzov, *supra* note 20; see also <http://ol-az.blogspot.com/2008/11/manifesto-for-change-in-azerbaijan.html>.

⁶⁵ Some press reports identify three men instead of two—Ikin Alizade, Vusal Mammadov and Babak Huseynov. See Reporters Without Borders, *Trial of Bloggers Marred by Abuses*, Sept. 17, 2009, <http://en.rsf.org/azerbaijan-trial-of-bloggers-marred-by-abuses-17-09-2009,33866>.

⁶⁶ Stephanie Rice & Dan Petty, *Hajizade's Activism Began at Richmond, Father Says*, *The Collegian*, July 16, 2009 (quoting court documents).

⁶⁷ *Id.*

⁶⁸ Complaint About Request on Recognition of Violence of Rights of Arrested People, at 1–2, N-AHH/PI-006, July 16, 2009 [hereinafter Complaint] (on file with Freedom Now).

⁶⁹ *Id.*

police released them. Human rights organizations expressed concern that the police did not carry out a thorough and impartial investigation of events, as evidenced, for example, by their failure to interview witnesses.⁷⁰

Hajizade and Milli were initially denied access to their own lawyer. The two requested their lawyer as soon as it became clear they were under suspicion. Authorities ignored this request. There was, however, a man in the interrogation room named Mammadov Vagif, who acted as the investigator's assistant.⁷¹ Only after their interrogation did Hajizade and Milli learn that Vagif was supposed to serve as their state-appointed lawyer.⁷² Indeed, Vagif aided the police investigator rather than assisting Hajizade or Milli.⁷³ Meanwhile, the investigator ordered that his staff not admit Hajizade's private lawyer, Isakhan Ashurov, to the building; Ashurov waited outside the police station to see Hajizade and Milli until 2 a.m. on July 9, 2009.⁷⁴ Hajizade and Milli were able to contact him the following day, at which point they declined assistance from the state-funded lawyer.

Police took the alleged victims' statement only after initiating a criminal case against Hajizade and Milli,⁷⁵ and never attempted to verify the identity of the alleged victims.⁷⁶ Irregularities in Mammadov's statement suggest that it was written by another person on his behalf.⁷⁷ The investigator's notes, moreover, indicate that the investigator knew Huseynov and Mammadov.⁷⁸ During the investigation, officials created no opportunity for Hajizade and Milli's lawyers to question the two men, whom the authorities immediately and continuously identified as victims.⁷⁹

Hajizade's injuries were severe enough that police had to call an ambulance, but the detaining authorities permitted only cursory medical attention.⁸⁰ Medical attention was limited to swabbing Hajizade's bloody face with cotton and water. During his hearing, Hajizade appealed directly to the judge about these injuries: "Your honor there is a serious injury on my face, my

⁷⁰ Amnesty International, *Azerbaijan: Two Youths Arrested*, July 17, 2009, available at <http://www.amnesty.org/en/library/asset/EUR55/006/2009/en/4530f6bf-7358-4d34-a5d3-3ac8eaad2ddd/eur550062009eng.html>.

⁷¹ Cassation Complaint, Court Collegium on Criminal Cases and Administrative Offenses, Supreme Court, ¶ 113, Apr. 27, 2010 [hereinafter Supreme Court Complaint] (on file with Freedom Now).

⁷² *Id.* ¶¶ 25, 113 (noting that Vagif simply signed procedural documents that the investigator drafted).

⁷³ *Id.* ¶¶ 48–49.

⁷⁴ Decision, Sabail District Court, July 23, 2009 [hereinafter July 23, 2009 Decision]. A German human rights ombudsman visiting Baku was also not allowed to visit Hajizade. See Blog of Hajizade and Milli Supporters, <http://videopetition.blogspot.com/2009/07/latest-report-on-arrest-of-emin-milli.html>.

⁷⁵ Supreme Court Complaint, *supra* note 71, ¶ 21.

⁷⁶ *Id.* ¶¶ 26, 54.

⁷⁷ *Id.* ¶ 21.

⁷⁸ *Id.* ¶ 55.

⁷⁹ *Id.* ¶ 57.

⁸⁰ Rice & Petty, *supra* note 66; Appellate Complaint, *supra* note 21, ¶ 3.

nose is in pain, I have problems with breathing. I ask you to create a condition for me to undergo X-rays.” The judge denied this request.⁸¹

On July 11, 2009, the Baku Police Department and City Prosecutor’s Office issued a distorted joint statement to the public that presented Hajizade and Milli as drunken hooligans. The account, released to mass media outlets, stated:

On [July 8, 2009] at around 18:00 o’clock Adnan Hajizade, as well as Emin Abdullayev . . . being under the influence of alcoholic drinks at the ‘Lebonese’ restaurant-bar expressed inappropriate expressions unfit for ethical norms in a loud manner for which they were caviled at. For this reason, these individuals, without any substantive reasons applied physical violence against Vusal Mammadov and Babak Huseynov and committed malicious acts of hooliganism.”⁸²

Hajizade and Milli’s three friends present at the restaurant on the night of the incident held a press conference shortly after the government’s statement, pointing out the distortion in the government’s version.⁸³ In response, the Baku police and Prosecutor’s Office later released another statement reaffirming the initial announcement and seeking to intimidate these witnesses.⁸⁴ Only after this statement did the investigator take steps to interview Hajizade and Milli’s companions as witnesses.⁸⁵

Further, when the alleged victims, Huseynov and Mammadov, were later called as reluctant witnesses at trial, both men were unable to answer basic questions about their backgrounds and occupations.⁸⁶ They only attended the first few court hearings,⁸⁷ and the Court of Appeals’ notifications to the two men were returned because the addresses they provided did not exist.⁸⁸

On July 13, 2009, Judge Rauf Ahmadov of the Sabail District Court issued a decision sentencing Hajizade and Milli to two months pre-trial detention pending a trial for “domestic group hooliganism” under Article 221.2 of the Azerbaijani Criminal Code.⁸⁹ In his decision, the

⁸¹ Appellate Complaint, *supra* note 21, ¶ 34. When Hajizade requested medical attention during the detainment hearing, the Judge instructed Hajizade to sit down: “Right now a trial is going on, you will undergo X-ray later.” *Id.*

⁸² Supreme Court Complaint, *supra* note 71, ¶ 34.

⁸³ *Id.* ¶ 35.

⁸⁴ *Id.* ¶¶ 37–39.

⁸⁵ *Id.* ¶¶ 36, 40.

⁸⁶ *Id.* ¶¶ 58–59.

⁸⁷ *Id.* ¶¶ 59, 26.

⁸⁸ *Id.* ¶ 59.

⁸⁹ *Id.* ¶ 32. Other sources report the date of the decision as July 10, 2009. See Institute for Reports Freedom and Safety, *Emin Milli and Adnan Hajizade Sentenced to Pre-Trial Detention*, Oct. 7, 2009, <http://www.irfs.az/content/view/2578/2/lang,eng/>; Novruzov, *supra* note 20.

Judge “simply copied word by word the request for an arrest from the prosecutor” and failed to give even one reason demonstrating the “sufficient basis” for the bloggers’ pretrial detention, as required by Azerbaijani law.⁹⁰ While counsel represented the bloggers at this hearing, the court did not permit witnesses or hear from the alleged victims—the actual attackers at the restaurant. Generally reserved for dangerous suspects with criminal histories, two months pre-trial detention is the maximum available under Azerbaijani law.⁹¹

3. Unfair Trial and Subsequent Imprisonment

In late August 2009, shortly before their trial began, the prosecutor added a charge of “deliberately inflicting minor bodily harm” under Article 127 of the Azerbaijani Criminal Code.⁹² The trial commenced in early September and proceedings went on for two months. From the initial hearing on September 4, 2009, before a Sabail district court, reports indicate that the prosecution gave contradictory statements, including those by the alleged victims.⁹³ Court officials limited public and press access to the hearing on September 4, 2009, claiming the hearing room was too small to accommodate them. Judge Huseynov denied the defense’s request to move the hearing to a bigger room.⁹⁴

The prosecution admitted no evidence that the alleged victims suffered injury, while Hajizade and Milli suffered severe and observable bodily injuries. For this reason, Hajizade and Milli requested that the court order an additional investigation into the charges. Judge Huseynov denied this request and further refused to recognize that Hajizade and Milli’s right to counsel had been infringed during their initial period of detention. The judge also refused to consider other evidence submitted by the defense, including recordings of the scene by security cameras and witnesses’ mobile phones. Finally, the judge denied their request for conditional release.⁹⁵

After two months of hearings, the bloggers were convicted on November 11, 2009.⁹⁶ Hajizade was sentenced to two years in prison and Milli was sentenced to two-and-one-half years. The two men were tried together for the same offence with the same exact set of facts. The court gave no reason justifying its decision to sentence Milli to a longer term of imprisonment. According to a journalist-advocacy group monitoring the trial, Judge Huseynov said he based the guilty verdict for both men on police reports and the injuries of the two plaintiffs, even though, as mentioned above, the prosecution presented no evidence of these injuries.⁹⁷ The bloggers were

⁹⁰ Appellate Complaint, *supra* note 21, ¶¶ 25–26.

⁹¹ Novruzov, *supra* note 20.

⁹² Elnur Mammadi, *Adnan Hajizadeh and Emin Milli Face One More Charge*, APA.AZ, Aug. 24, 2009.

⁹³ Committee to Protect Journalists, *Azerbaijani Bloggers Receive Jail Sentences*, Nov. 11, 2009 [hereinafter CPJ Sentences], <http://cpj.org/2009/11/azerbaijani-bloggers-receive-jail-sentences.php>.

⁹⁴ See Reporters Without Borders, *supra* note 65; Radio Free Europe, *Trial of Azerbaijani Bloggers Opens in Baku*, Sept. 4, 2009, http://www.rferl.org/content/Trial_Of_Azerbaijani_Bloggers_Opens_In_Baku/1814984.html.

⁹⁵ Reporters Without Borders, *supra* note 65.

⁹⁶ Clifford J. Levy, *Azerbaijan: Bloggers Convicted*, N.Y. TIMES, Nov. 11, 2009, available at <http://www.nytimes.com/2009/11/12/world/asia/12briefs-azerbaijanbrf.html>.

⁹⁷ CPJ Sentences, *supra* note 93.

unsuccessful on appeal; the conviction was affirmed on March 10, 2010.⁹⁸ The Supreme Court rejected their appeal on August 19, 2010.⁹⁹

Hajizade and Milli served approximately a year and four months of their respective two and two-and-a-half year sentences. In early April 2010, as a result of the dismissal of their appeal, Hajizade and Milli were transferred from the same Baku prison to two different prisons outside the city. Milli was then held at Azerbaijan's Prison No. 5 in Khalaj (Salyan)¹⁰⁰ and Hajizade was held at Azerbaijan's Prison No. 14 in Guzdek (Gizildash). Prison conditions in Azerbaijan are "generally harsh and life threatening."¹⁰¹ Prison No. 14, in particular, has been the subject of "a number of allegations of inhumane treatment and violent abuses by the staff."¹⁰² Some family, friends, and supporters were reportedly barred from visiting Hajizade in his new location.¹⁰³ Both men are currently released, but only on conditional release. They remain at risk for being imprisoned again under the same charges.

4. International Criticism of the Arrest

Foreign governments and Non-Governmental Organizations ("NGOs") have sharply criticized the Azerbaijani government's arrest and detention of Hajizade and Milli, dismissing the charges as fabricated. Baku-based Institute of Reporters' Freedom and Safety called the arrest "politically motivated."¹⁰⁴ Shortly after the arrest, U.S. Deputy Secretary of State James Steinberg expressed concern and stated that the U.S. would closely monitor the situation.¹⁰⁵ The State Department's 2010 country report for Azerbaijan recognizes the numerous procedural defects in the bloggers' arrest, detention, and trial.¹⁰⁶ Thomas Hammarberg, the Council of Europe's Human Rights Commissioner, visited Azerbaijan in March 2010 and met with the imprisoned Milli. He reported that the case appeared to be one in which "resort has been made to various provisions in the Criminal Code . . . to prosecute journalists, or—more generally—to

⁹⁸ CPJ Appeal, *supra* note 45; Radio Free Europe, http://www.rferl.org/content/Jailed_Azerbaijani_Bloggers_Appeal_Rejected/1980103.html.

⁹⁹ European Digital Rights, *Azeri bloggers appeal rejected by the Supreme Court*, Aug. 25, 2010, <http://www.edri.org/edriagram/number8.16/azeri-bloggers-appeal-rejected>.

¹⁰⁰ APA, *Azerbaijani Justice Ministry Permits Emin Milli to Attend His Father's Funeral*, APA.AZ, June 29, 2010, <http://en.apa.az/news.php?id=125264>.

¹⁰¹ DOS Country Report, *supra* note 35.

¹⁰² Thomas Hammarberg, *Report Following Visit to Azerbaijan of March 1-5, 2010*, June 29, 2010 [hereinafter Hammarberg Report], available at <https://wcd.coe.int/ViewDoc.jsp?id=1642017>.

¹⁰³ Ulviyee Asadzade, *Jailed Azerbaijani Bloggers Fight Solitude*, Radio Free Europe, May 03, 2010, http://www.rferl.org/content/Jailed_Azerbaijani_Bloggers_Fight_Solitude/2031419.html.

¹⁰⁴ Institute for Reporters Freedom and Safety, *Emin Milli's and Adnan Hajizade's Arrest Politically Motivated*, Sept. 7, 2009, <http://www.irfs.az/content/view/2567/1/lang,eng/>.

¹⁰⁵ Ceyms Steynberq, *Emin Milli və Adnan Hacızadənin məsələsini diqqətlə izləyirik*, Azadlıq Radiosu, July 11, 2009, <http://www.azadliq.org/content/article/1774423.html>.

¹⁰⁶ DOS Country Report, *supra* note 35.

silence undesired voices.”¹⁰⁷ Amnesty International identified Hajizade and Milli as prisoners of conscience.¹⁰⁸

II. Analysis

The detention of Hajizade and Milli constitutes an arbitrary deprivation of their liberty¹⁰⁹ that falls within Category II and Category III as established by the UN Working Group on Arbitrary Detention.¹¹⁰ Specifically, the detention is arbitrary under Category II because Hajizade and Milli were detained for exercising their right to freedom of expression. The detention is also arbitrary under Category III because the government failed to observe international norms relating to a fair trial in the arrest and trial of Hajizade and Milli.

Azerbaijan has committed itself internationally and domestically to protecting certain human rights, which should prevent such Category II and III violations. Azerbaijan acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1992.¹¹¹ Azerbaijan has also been a member of the North Atlantic Treaty Organization’s “Partnership for Peace” Program since 1994, which obligates Azerbaijan to uphold the Universal Declaration of Human Rights (“UDHR”).¹¹² Finally, Azerbaijan’s constitution, which came into force on November 27, 1995, imposes domestic obligations on the government to protect certain human rights.¹¹³

¹⁰⁷ Hammarberg Report, *supra* note 102.

¹⁰⁸ Amnesty International, *Ensure Convicted Azerbaijani Bloggers Receive Fair Appeal Hearing*, July 13, 2010, <http://www.amnesty.org/en/node/17629>; *see also* Amnesty International, *supra* note 70.

¹⁰⁹ An arbitrary deprivation of liberty is defined as any “depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law.” International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* 23 March 1976, art. 9(1) [hereinafter ICCPR]. Such a deprivation of liberty is specifically prohibited by international law. *Id.* “No one shall be subjected to arbitrary arrest, detention or exile.” Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, art. 9 (1948) [hereinafter UDHR]. “Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . .” Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, at Principle 2, G.A. Res. 47/173, Principle 2, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

¹¹⁰ *See* Office of the High Commissioner for Human Rights, *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, United Nations, <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

¹¹¹ ICCPR, *supra* note 109, art. 9(3); *Status of the International Covenant on Civil and Political Rights*, UNITED NATIONS TREATY COLLECTION, Oct. 19, 2010, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

¹¹² *See NATO Topics: The Partnership For Peace*, NORTH ATLANTIC TREATY ORGANIZATION, Apr. 2, 2009, <http://www.nato.int/issues/pfp/index.html>.

¹¹³ Constitution of the Republic of Azerbaijan, art. 25 (“The state guarantees equality of rights and liberties of everyone, irrespective of . . . political convictions . . .”), art. 47 (freedom of thought and speech), art. 50 (freedom of information), art. 51 (freedom of creative activity), art. 57 (articulating the right to “criticize activity or work of state bodies, [and] their officials” and prohibiting “[p]rosecution for criticism”), art. 63 (presumption of innocence), art. 127(2) (“[J]udges must be impartial, fair, they should provide juridical equality of parties, act based on facts and according to the law.”), adopted Nov. 12, 1995 [hereinafter Constitution], *available at* http://www.servat.unibe.ch/icl/aj00000_.html.

Category II:

A Category II deprivation of liberty occurs, “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20, and 21 of the Universal Declaration on Human Rights and, and insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26, and 27 of the International Covenant on Civil and Political Rights.”¹¹⁴ The government’s arrest and detention of Hajizade and Milli constitutes a Category II violation because government authorities detained them for their exercise of the right to free expression and in contravention of Azerbaijan’s duty to apply the law without discrimination on the basis of political or other opinion.¹¹⁵ Specifically, Azerbaijan’s detention of Hajizade and Milli violates Article 19 of the ICCPR and Article 19 of the UDHR, which guarantee the right “to seek, receive and impart information and ideas.”¹¹⁶ In addition, Hajizade and Milli’s detention is inconsistent with Article 26 of the ICCPR and Article 7 of the UDHR, which require Azerbaijan to equally apply the law, without regard to political or other opinion.¹¹⁷

Category III:

The Working Group considers a deprivation of liberty to be a Category III arbitrary detention “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”¹¹⁸ Hajizade and Milli’s case also qualifies as a Category III detention because Azerbaijan denied him a fair trial.¹¹⁹ Specifically, the Court denied them a fair trial in violation of Article 14 of the ICCPR (preserving the right to a “fair and

¹¹⁴ Office of the High Comm’r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B).

¹¹⁵ Working Group on Arbitrary Detention: Individual Complaints, Urgent Appeals, Deliberations, OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS [hereinafter Working Group Standards], <http://www2.ohchr.org/english/issues/detention/complaints.htm> (defining Category II violation).

¹¹⁶ ICCPR, *supra* note 109, art. 19(2) (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”); UDHR, *supra* note 109, art. 19 (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”).

¹¹⁷ ICCPR, *supra* note 109, art. 26 (“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”); *see also* UDHR, *supra* note 109, art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”).

¹¹⁸ Office of the High Comm’r for Human Rights, United Nations, Fact Sheet No. 26: The Working Group on Arbitrary Detention, pt. IV(B).

¹¹⁹ Working Group Standards, *supra* note 115 (defining Category III violation).

public hearing” by an “independent, and impartial tribunal”), and Articles 10 and 11 of the UDHR (guaranteeing a “fair and public hearing by an independent and impartial tribunal” and securing the presumption of innocence). Azerbaijan refused to grant Hajizade and Milli a public and impartial trial, denied them sufficient time to prepare an adequate defense, failed to consider exculpatory evidence, and refused to examine witnesses. These practices also violated various provisions of the European Convention of Human Rights (“ECHR”).

Hajizade and Milli’s trial and detention, moreover, violate various provisions of Azerbaijan’s domestic law, including Articles 63 and 127 of its Constitution, which respectively provide that all suspects are innocent until proven guilty, and that judicial rulings be based on an unbiased review of fairly presented facts.¹²⁰ Hajizade’s and Milli’s trial violated these requirements because they were not allowed to cross-examine witnesses or enter videos of the fight into evidence, and their requests for further investigation were routinely denied.¹²¹

A. Hajizade and Milli’s Arrest, Trial, and Detention Offends Azerbaijan’s Constitution and Criminal Law

The government’s actions in prosecuting and detaining Hajizade and Milli violate provisions of Azerbaijan’s Criminal Code, local codes of police procedure, the Azerbaijani Code of Criminal Procedure, and the Constitution of the Azerbaijan Republic. Contravening each of these standards, the Azerbaijani government discriminated against Hajizade and Milli for their political beliefs and activism.

Violations of procedure and due process started immediately upon Hajizade and Milli’s arrival at the police station. First, the Criminal Code requires the immediate opening of an investigation for only a specific list of crimes. Hooliganism is not among them.¹²² In cases where an investigation is not immediately opened, the Code of Criminal Procedure requires a preliminary investigation before opening a formal criminal investigation.¹²³ In violation of the Code, the government conducted no preliminary investigation before immediately opening a criminal investigation of the two bloggers.¹²⁴

Second, the authorities’ failure to provide effective medical assistance to the injured men while subjecting them to four hours of interrogation violates several provisions of domestic constitutional and statutory law, which prohibit ill-treatment and affronts to the “dignity” of

¹²⁰ Constitution, *supra* note 113.

¹²¹ See Reporters without Borders, *supra* note 65.

¹²² Statement of Isakhan Ashurov, Transcript of Closed Trial of Court of Appeal, July 20, 2009 [hereinafter Appeals Transcript] (on file with Freedom Now).

¹²³ *Id.*

¹²⁴ See Appellate Complaint, *supra* note 21, ¶ 4.

suspects.¹²⁵ At the detainment hearing, the judge casually dismissed the two men’s complaint regarding the government’s failure to provide adequate medical treatment.¹²⁶ Hajizade and Milli were in police custody throughout the night of July 8 and the morning of July 9 prior to their hearing. During that time, they did not have proper medical care.

Third, the bloggers’ pretrial detention violates the Code of Criminal Procedure’s requirement that restrictive measures, of which pretrial detention is an extreme example, be proportionate and necessary.¹²⁷ The two-month detention prior to trial is generally reserved for suspects without legal residence or employment, neither of which was the case with Hajizade and Milli. Furthermore, this detention violated Part II of Article 26 of the local code, which enumerates the circumstances under which police may apply “special measures” to a noncompliant suspect. Those measures are to be used “only at necessity cases [sic] adequate to the posed threat.”¹²⁸ Hajizade and Milli posed no risk of flight. Neither one had a criminal history. Hajizade had a lucrative job, and Milli’s elderly parents relied on him for support.¹²⁹

Fourth, the court denied Hajizade and Milli due process during their trial—a guarantee provided by the Constitution of Azerbaijan. Article 63 provides that all suspects are innocent until proven guilty, and Article 127 requires that judicial rulings be based on facts presented in a fair, unbiased manner.¹³⁰ Hajizade and Milli’s trial violated both these requirements. They were not allowed to cross-examine witnesses or enter videos of the fight into evidence, and their requests for additional investigation were routinely denied.¹³¹

Finally, Azerbaijan’s Constitution guarantees that “everyone may enjoy freedom of thought and speech.”¹³² The inattention to appropriate procedures during Hajizade and Milli’s arrest, detention, trial, and appeals suggests that they were targeted because of their criticism of the Azerbaijani government—actions which Article 47 of the Constitution clearly protects.

¹²⁵ Constitution, *supra* note 113, art. 46; 1999 Local Code Governing Police, art. 5(2); *see also* Complaint, *supra* note 68, ¶¶ 10–12.

¹²⁶ July 23, 2009 Decision, *supra* note 74.

¹²⁷ Memorandum of Isakhan Ashurov Regarding Internal Legislation, undated (on file with Freedom Now).

¹²⁸ Complaint, *supra* note 68, ¶ 9.

¹²⁹ Supreme Court Complaint, *supra* note 71, ¶¶ 86–87; 91–92.

¹³⁰ Constitution, *supra* note 113.

¹³¹ Reporters without Borders, *supra* note 65.

¹³² Constitution, *supra* note 113, art. 47.

B. Azerbaijan’s Detention of Hajizade and Milli Resulted from Its Discrimination Against Them For Their Criticism of the Government in Exercise of the Fundamental Right to Freedom of Expression

The ICCPR, UDHR, and the Azerbaijani Constitution protect freedom of expression. Article 19 of the ICCPR protects the rights of individuals to “seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”¹³³ The UDHR’s Article 19 provides similar protection for freedom of expression.¹³⁴ Article 10 of the ECHR also secures the freedom of expression, which “shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”¹³⁵

Similarly, the ICCPR, UDHR, and Azerbaijani Constitution prohibit discriminatory treatment on the basis of political belief. Article 26 of the ICCPR establishes that all are equal before the law and entitled to its protection without “discrimination on any ground such as . . . political or other opinion.”¹³⁶ Article 7 of the UDHR provides that all are “entitled without any discrimination to equal protection of the law.”¹³⁷

Hajizade and Milli’s detention violates these provisions because the circumstances of their arrest, trial, and detention demonstrate that the bloggers were targeted for their sustained public criticism of the government, and that the law was applied in a discriminatory fashion to secure their convictions.

As described above, at the time of their arrest Hajizade and Milli were regularly engaged in public criticism of the government. Days before their arrest, the bloggers created and disseminated a video critical of the government. After posting the above-described donkey video on the internet on June 18, 2009, Hajizade felt that he was being followed.¹³⁸ Hajizade and Milli were discussing politics with friends in a downtown Baku restaurant on July 8, 2009, when Babak Huseynov and Vusal Mammadov attacked them, severely injuring both Hajizade and Milli. When Hajizade and Milli went to the police station to report the crime, the police instead arrested and detained them. Though Hajizade and Milli were not initially aware of it, they were

¹³³ ICCPR, *supra* note 109, art. 19.

¹³⁴ UDHR, *supra* note 109, art. 19.

¹³⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10(1), Sept. 3, 1953, 213 U.N.T.S. 221, art. 10(1) [hereinafter ECHR].

¹³⁶ ICCPR, *supra* note 109, art. 26; *see also* UDHR, *supra* note 116, art. 7 (“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”).

¹³⁷ UDHR, *supra* note 109, art. 7.

¹³⁸ Supreme Court Complaint, *supra* note 71, ¶ 190.

under investigation as suspects; the police interrogated them for four hours.¹³⁹ In the interrogation room was a man named Mammadov Vagif, who acted as the investigator’s assistant.¹⁴⁰ Only after their interrogation did Hajizade and Milli learn that Vagif was supposed to serve as their state-appointed lawyer.¹⁴¹ Meanwhile, the investigator ordered that his staff not admit Hajizade’s private lawyer, Isakhan Ashurov, to the building.¹⁴² Ashurov waited outside the police station well into the night.¹⁴³

The investigation was biased from the very beginning. Indeed, the police took the alleged victims’ statement only after initiating a criminal case against Hajizade and Milli,¹⁴⁴ and never attempted to verify the identity of the alleged victims.¹⁴⁵ Irregularities in Mammadov’s statement suggest that it was written by another person on his behalf.¹⁴⁶ The investigator’s notes, moreover, indicate that the investigator knew Huseynov and Mammadov.¹⁴⁷ During the investigation, officials created no opportunity for Hajizade and Milli’s lawyers to question the two men, whom the authorities immediately and continuously identified as victims.¹⁴⁸ When later called as reluctant witnesses at Hajizade and Milli’s trial, both men were unable to answer basic questions about their backgrounds and occupations.¹⁴⁹ Huseynov and Mammadov only attended the first few court hearings,¹⁵⁰ and the Court of Appeals’ notifications to the two men were returned because the addresses they provided did not exist.¹⁵¹ In sum, the timing of the arrest—ten days after the donkey video was posted—the government’s failure to conduct an actual investigation, and the circumstances surrounding their arrest and trial indicate that Hajizade and Milli’s detention was punishment for their exercise of the fundamental right to free expression. The government discriminatorily applied the law to secure their conviction.

Amnesty International, Human Rights Watch, Freedom House, Reporters Sans Frontières, the Swedish Presidency of the European Union, the German Federal Commissioner

¹³⁹ *Id.* ¶ 110.

¹⁴⁰ *Id.* ¶ 113.

¹⁴¹ *Id.* ¶¶ 25, 113 (noting that Vagif simply signed procedural documents that the investigator drafted); *see also* Appellate Complaint, *supra* note 21.

¹⁴² Supreme Court Complaint, *supra* note 71, ¶ 113; July 23, 2009 Decision, *supra* note 74; Appellate Complaint, *supra* note 21.

¹⁴³ Complaint, *supra* note 68, ¶ 4.

¹⁴⁴ Supreme Court Complaint, *supra* note 71, ¶ 21.

¹⁴⁵ *Id.* ¶¶ 26, 54.

¹⁴⁶ *Id.* ¶ 21.

¹⁴⁷ *Id.* ¶ 55.

¹⁴⁸ *Id.* ¶ 57.

¹⁴⁹ *Id.* ¶¶ 58–59.

¹⁵⁰ *Id.* ¶¶ 59, 26.

¹⁵¹ *Id.* ¶ 59.

for Human Rights and Foreign Aid Ombudsman, and the U.S. Department of State all issued statements observing that Hajizade's and Milli's outspoken criticism of the government was the motivating factor in their arrest, conviction, and detention—a clear violation of Article 19 of both the ICCPR and UDHR.¹⁵² In detaining two prominent bloggers, moreover, the Azerbaijani government sent an unmistakable message to other journalists, activists, and bloggers in the country: criticism of the government will not be tolerated. Hajizade and Milli's detention thus deters other Azerbaijani citizens from exercising their rights to free speech and expression.

C. Azerbaijan's Detention of Hajizade and Milli Resulted from the Government's Failure to Provide them with a Fair Trial

The ICCPR, UDHR, and the Azerbaijani Constitution protect the right to a fair trial. Articles 10 and 11 of the UDHR guarantee the right to a “public” trial by an “independent and impartial tribunal.”¹⁵³ Similarly, Article 14 of the ICCPR preserves the right “to a fair and public hearing by a competent, independent and impartial tribunal.”¹⁵⁴ Article 14 also secures the presumption of innocence, requires that every criminal defendant be allowed to obtain witnesses on his behalf, and mandates that every criminal defendant have adequate time to prepare his defense.¹⁵⁵ Article 8 of the UDHR guarantees “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”¹⁵⁶ Finally, Article 6 of the ECHR similarly requires that all accused receive a fair trial and public hearing.¹⁵⁷

The Azerbaijani authorities violated each of these provisions by failing to provide Hajizade and Milli with a fair process—from the time of their initial detention through their

¹⁵² See Presidency Statement on Azerbaijan, SWEDISH PRESIDENCY OF THE EUROPEAN UNION, Oct. 19, 2010, http://www.se2009.eu/en/meetings_news/2009/11/12/presidency_statement_on_azerbaijan; Nooke Protests Against Prison Terms for Two Youth Activists in Azerbaijan, THE FEDERAL FOREIGN OFFICE, Nov. 11, 2009, <http://www.auswaertiges-amt.de/diplo/en/Infoservice/Presse/Meldungen/2009/091111-Nooke-Aserbaidtschan.html>; Verdict in the Court Case of Imprisoned Youth Activists Emin Milli and Adnan Hajizade, U.S. DEPARTMENT OF STATE, Nov. 11, 2009, <http://www.state.gov/r/pa/prs/ps/2009/nov/131798.htm>; Azerbaijan: Bloggers Sentenced to Prison Terms, AMNESTY INTERNATIONAL, Nov. 12, 2010, <http://www.amnesty.org/en/library/asset/EUR55/009/2009/en/655ee814-8957-4c08-b4f3-16772a16d9c2/eur550092009en.html>; Azerbaijan: Young Bloggers Jailed, HUMAN RIGHTS WATCH, Nov. 12, 2010, <http://www.hrw.org/en/news/2009/11/12/azerbaijan-young-bloggers-jailed>; Bloggers' Jailing Threatens New Media's Emergence in Azerbaijan, FREEDOM HOUSE, Nov. 12, 2009, <http://www.freedomhouse.org/template.cfm?page=70&release=1095>; Trial of Bloggers Marred by Abuses, Arrests, REPORTERS SANS FRONTIÈRES, Sept. 17, 2009, <http://en.rsf.org/azerbaijan-trial-of-bloggers-marred-by-abuses-17-09-2009,33866>.

¹⁵³ UDHR, *supra* note 109, arts. 10–11.

¹⁵⁴ ICCPR, *supra* note 109, art. 14(1).

¹⁵⁵ *Id.* art. 14(2)–(3).

¹⁵⁶ UDHR, *supra* note 109, art. 8.

¹⁵⁷ ECHR, *supra* note 135, art. 6; *see also* Constitution, *supra* note 113, art. 61.

conviction and appeals. Following their arrest and interrogation in the presence of ineffective, state-appointed counsel, Hajizade and Milli were formally charged the next day, July 9, 2009.¹⁵⁸

On July 11, 2009, the Baku Police Department and City Prosecutor's Office severely infringed on the presumption of innocence by issuing a distorted joint statement to the public that presented Hajizade and Milli as drunken hooligans.¹⁵⁹ In response, the three men with Hajizade and Milli at the restaurant on the night of the incident held a press conference shortly after the government's statement, pointing out the distortion in the government's version.¹⁶⁰ The Baku police and Prosecutor's Office responded by releasing yet another statement reaffirming the initial announcement and seeking to intimidate these witnesses.¹⁶¹ Only after this statement did the investigator take steps to interview Hajizade and Milli's companions as witnesses.¹⁶²

A few days later, on July 13, 2009, Sabail District Court Judge Ahmadov sentenced both men to two months pre-trial detention.¹⁶³ In violation of ICCPR Article 14 and UDHR Articles 10 and 11, the District Court was neither independent nor impartial, and Hajizade and Milli were not presumed innocent of the charges against them. Judge Ahmadov simply adopted his decision without even looking at the case materials or expressing interest in the evidence Hajizade and Milli presented.¹⁶⁴ The judge's opinion did not address any points raised by the defense.¹⁶⁵

This systematic bias and discriminatory treatment continued when Hajizade and Milli repeatedly requested to be released on bail. These requests were repeatedly and summarily denied, in violation of Azerbaijani criminal procedure and the ICCPR.¹⁶⁶ Article 9(3) of the ICCPR disfavors pre-trial detention when other means of ensuring defendants' attendance at trial are available.¹⁶⁷ Given that neither Hajizade nor Milli had a criminal history and that neither posed a risk of flight—Hajizade had a lucrative job with BP Azerbaijan and Milli's elderly parents relied on him for care—Judge Huseynov's denial of their request for conditional release likely violates this provision. Hajizade and Milli's pretrial detention also violates Article 9(1)'s mandate that “[n]o one shall be subjected to arbitrary arrest and detention.”

¹⁵⁸ Complaint, *supra* note 68, ¶ 29.

¹⁵⁹ Supreme Court Complaint, *supra* note 71, ¶ 34.

¹⁶⁰ *Id.* ¶ 35.

¹⁶¹ *Id.* ¶¶ 37–39.

¹⁶² *Id.* ¶¶ 36, 40.

¹⁶³ *Id.* ¶ 32.

¹⁶⁴ ECHR Application, *supra* note 8, ¶ 13.

¹⁶⁵ Supreme Court Complaint, *supra* note 71, ¶¶ 78–82.

¹⁶⁶ *Id.* ¶¶ 99–102; 105–108.

¹⁶⁷ ICCPR, *supra* note 109, art. 9(3) (“It shall not be the general rule that persons awaiting trial shall be detained in custody.”).

Hajizade and Milli's multiple subsequent complaints to the courts were likewise denied, sometimes even without their presence.¹⁶⁸ For example, Hajizade and Milli submitted a complaint on July 29, 2009, to the District Court regarding the state's violation of their presumption of innocence. The Judge reviewed the case with the investigator and did not summon the defendants to the hearing.¹⁶⁹ Referencing the government's press releases about the charges against Hajizade and Milli, the judge denied the complaint on August 10, 2009, without examining any relevant witnesses.¹⁷⁰ The appellate court reviewed the submission in secret—seeking only the input of the police investigator—before affirming the District Court's denial of the bloggers' complaint.¹⁷¹ The bloggers' hearing on July 20, 2009, also suggested bias against the defendants because the Court of Appeals summarily rejected their protest of the closed trial and took no action in response to the bloggers' complaint about being handcuffed.¹⁷²

In sum, both the Baku police and the trial court failed to produce any credible evidence justifying the arrests and detentions of Hajizade and Milli. The prosecutor carried out a biased and cursory investigation designed to charge the bloggers with fabricated evidence and ignore exonerating evidence.¹⁷³ The state-appointed lawyer present during their initial interrogation aided the police investigator rather than assisting in Milli and Hajizade's defense; the bloggers did not even know he represented them. On November 11, 2009, the District Court relied on the biased examination of the investigator to find Hajizade and Milli guilty.¹⁷⁴ Relying on Huseynov and Mammadov's unreliable testimony, the appeals court cursorily upheld the District Court's decision, and refused to allow further investigation.¹⁷⁵ Indeed, the appeals court simply cites the unreliable testimony of the alleged "victims."¹⁷⁶ Hajizade and Milli were thus subject to arbitrary arrest and detention in violation of Article 9 of the UDHR and the ICCPR.¹⁷⁷ Azerbaijan's detention of the bloggers resulted from its failure to provide them with a fair trial.

¹⁶⁸ Supreme Court Complaint, *supra* note 71, ¶¶ 115–19 (stating that Hajizade and Milli's July 16, 2009, complaint regarding the violation of their right to defense was denied in their absence, and affirmed on appeal); *Id.* ¶¶ 135–41 (stating that Hajizade and Milli's July 29, 2009 complaint regarding the violation of their right to the presumption of innocence was denied in their absence, without examining relevant officials, and affirmed on appeal).

¹⁶⁹ *Id.* ¶ 135.

¹⁷⁰ *Id.* ¶ 137.

¹⁷¹ *Id.* ¶¶ 139–40.

¹⁷² Appeals Transcript, *supra* note 122.

¹⁷³ Supreme Court Complaint, *supra* note 71, ¶¶ 41–46.

¹⁷⁴ *Id.* ¶¶ 48–49.

¹⁷⁵ *Id.* ¶¶ 50–52; 165–73. The Appeals court laughably characterized the District Court's sentence as follows: "the First Instance Court in its review conducted a comprehensive examination of the evidence and made an objective appraisal of them in its sentence." *Id.* ¶ 168.

¹⁷⁶ *Id.* ¶¶ 166–67.

¹⁷⁷ See UDHR, *supra* note 109, art. 9; ICCPR, *supra* note 109, art. 9.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

Hajizade and Milli exhausted all remedies made available to them by Azerbaijani law. As described above, Hajizade and Milli were unsuccessful on appeal. Their conviction was affirmed on March 10, 2010.¹⁷⁸ The Azerbaijani Supreme Court upheld Hajizade and Milli's convictions on August 19, 2010.¹⁷⁹ The bloggers also filed an application before the European Court of Human Rights on January 18, 2010. The ECHR's judicial backlog, however, reached 119,300 applications in 2009.¹⁸⁰ It is, therefore, unlikely that Hajizade and Milli will receive a judgment soon. Both men remain at risk of further arbitrary detention, as their recent release was conditional.

¹⁷⁸ CPJ Appeal, *supra* note 45; Radio Free Europe, http://www.rferl.org/content/Jailed_Azerbaijani_Bloggers_Appeal_Rejected/1980103.html.

¹⁷⁹ European Digital Rights, *Azeri bloggers appeal rejected by the Supreme Court*, Aug. 25, 2010, <http://www.edri.org/edriagram/number8.16/azeri-bloggers-appeal-rejected>.

¹⁸⁰ Council of Europe, *Protocol 14 – The Reform of the ECHR*, May 15, 2010, available at <http://www.echr.coe.int/NR/rdonlyres/57211BCC-C88A-43C6-B540-AF0642E81D2C/0/CPProtocole14EN.pdf>.

V. REQUEST FOR RELIEF

Based on the foregoing, Petitioner respectfully requests that the Working Group conclude that Azerbaijan's detention of Adnan Hajizade and Emin Milli constituted an arbitrary deprivation of liberty, falling into Categories II and III of cases identified by the Working Group. While both men are currently out of prison, their release is conditional, and they remain in threat of further detention for the continued exercise of their rights to freedom of expression.

VI. FULL NAME AND ADDRESS OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE)

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