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## **Azerbaijan: Reluctance, manipulation and discrimination. Deadlock in implementation of Mammadli/Mammadov group of cases**

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### **Introduction**

Azerbaijan stands as the 5th on the non-implementation scale in the European Court of Human Rights' (ECtHR or the Court hereinafter) decisions.<sup>1</sup> In leading *Mammadli group of cases* (*Mammadli group* hereinafter), the general reluctance of authorities is combined with selective justice in relation to the applicants. In an apparent systemic approach, the Government has mostly avoided delivering the implementation of judgements in a full, meaningful and timely manner.

This article examines the deadlock established by the Azerbaijani government in the way of implementation of the Court decisions in a remarkable *Mammadli group* alongside analysis of such record under the international human rights law obligations.

### **Background**

According to Article 46 of the European Convention on Human Rights (ECHR or the Convention hereinafter) States party to the Convention must implement the decisions of the ECtHR under the supervision of the Committee of Ministers of the Council of Europe (the Committee hereinafter).<sup>2</sup> Azerbaijan accepted the jurisdiction of the ECHR in 2002 and has undertaken an obligation to implement the Court's decisions since that. Moreover, as enshrined in the 'Vienna Convention on the Law of Treaties', States party to a treaty must adhere to the international recognized principle of '*pacta sunt servanda*' which entails compliance with the relevant provisions with a 'good faith'.<sup>3</sup> However, Azerbaijan is among the group of countries with the slowest record of execution and an ever-growing number of pending cases.<sup>4</sup> As will be explored through the following sections, Azerbaijan's non-implementation record is also at odds with obligations it infers under the 'Draft Articles on Responsibility of States for Internationally Wrongful Acts' (ARSIWA hereinafter) which

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<sup>1</sup> Council of Europe (CoE) year of the publication, 'Supervision of the Execution of Judgements and Decisions of the European Court of Human Rights 2021', (2022), p 64, <https://rm.coe.int/2021-cm-annual-report-en/1680a60140>

<sup>2</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, (4 November 1950), ETS 5, (ECHR)

<sup>3</sup> United Nations, *Vienna Convention on the Law of Treaties*, (23 May 1969), United Nations, Treaty Series, vol. 1155, p.331, article 26

<sup>4</sup> European Implementation Network, "Azerbaijan", (2022), <https://www.einnetwork.org/azerbaijan-echr> (EIN Factsheet)

also reflects requirements for States to faithfully implement their obligations under international treaties.<sup>5</sup>

Following the decision delivered by ECtHR, the Committee begins supervising the implementation of the case. The Committee first decides whether the cases have repetitive or leading characteristics and need to have enhanced or standard supervision. Moreover, it enlists the number of individual and general measures needed to be delivered by the State to effectively execute the judgement by ECtHR. Individual measures are for curing the results of the detected violation which may mean the release of the applicant from prison, payment of just satisfaction, *restitutio in integrum* and others. General measures are sought to handle the root causes of the violation to prevent its reoccurrence by realizing significant changes in the system in place in the given country.

*Mammadli group* of cases concern cases of human rights advocates, politicians and journalists whose rights were violated with a view to paralyse their professional work according to the Court. Over the time of supervision of implementation, the Committee has grouped 11 cases in the group of which the implementation is supervised under enhanced procedure given similar nature of violations and significance of the execution.

### **Azerbaijan and the general implementation figures**

Azerbaijan remains one of the countries with an infamous record of non-implementation of the Court judgements. Accordingly, as of June 2022, 290 cases await their implementation by the authorities in Azerbaijan with the average number of pending cases per country being 132 as of August 2022.<sup>6</sup> Out of these 296 cases, 52 are leading cases which bear special significance.

Cases are considered to have a leading character when the detected violations point to systemic issues in the given country and require decisive steps to address the root causes and prevent the occurrence in future. Remarkably, leading cases await an average of 7.5 years to be implemented in Azerbaijan after the decision made by the Court.<sup>7</sup> Moreover, 97% of the leading cases are still pending without satisfactory execution throughout the last 10 years.<sup>8</sup>

Such stark figures highlight the problematic pattern of either reluctance or unwillingness to adopt necessary measures to comply with the ECHR judgements, deliver justice and uphold human rights.

### **Briefly on the Mammadli group of cases and the current situation**

In *Mammadli group*, which was formerly called *Mammadov group* is a leading case pending to be implemented by Azerbaijan with the earliest and latest judgements dating 2014 and

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<sup>5</sup> International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, (November 2001), Supplement No. 10 (A/56/10), chp.IV.E.1, (ARSIWA); International Law Commission, 'Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', (2001), Yearbook of the International Law Commission, 2001, vol. II, Part Two, Articles 1-2, (ARSIWA Commentary)

<sup>6</sup> CoE Department for the Execution of Judgments of the European Court of Human Rights (CoE DEJ), 'Country Factsheet; Azerbaijan', (2022), <https://www.coe.int/en/web/execution/azerbaijan>

<sup>7</sup> EIN Factsheet (n3)

<sup>8</sup> *Ibid*

2021. The group contained cases of 16 people of human rights defenders<sup>9</sup>, civil society activists<sup>10</sup>, journalist<sup>11</sup> and politicians<sup>12</sup> who were imprisoned between 2013-2019.

The applicants suffered from unlawful imprisonment, confiscation of work materials, freezing of bank accounts, travel bans, degrading treatment and other infringements of their human rights protected by the Convention. ECtHR found the Azerbaijani government in breach of the Convention and recognized that authorities have restricted the rights of the applicants by imprisoning and paralyzing their human rights work with a view to discourage them and muzzle the criticism of the government.<sup>13</sup> Accordingly, the Government failed to show a legitimate aim behind the infringements of rights where the Court repeatedly mentioned the misuse of the criminal-justice system abused against the applicants.<sup>14</sup> ECtHR has found a violation of Article 18 of the ECHR in all cases within the conjunction of freedom from torture, right to a fair trial, privacy and others.

As of 2022, only a handful of applicants gained acquittal and compensation as a result of the Court judgements with disappointingly slow progress in terms of general measures to be implemented.

### **Significance of Article 18 findings**

Though there are almost 300 cases pending before the Committee to be implemented by Azerbaijan, the *Mammadli group* stands out for the nature of found violations regarding Article 18 which plays an important role in the ECHR's jurisprudence. Accordingly, it provides that

“The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”<sup>15</sup>

During the preparation of the Convention, article 18 was finally agreed upon to be reflected in the final document with a view to prevent the member States from becoming totalitarian.<sup>16</sup> In other words, the provision has a significant role in ensuring the protection of rule of law

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<sup>9</sup> *Aliyev v Azerbaijan*, Application nos. 68762/14 and 71200/14 (ECHR, 04 April 2019); *Mammadli v Azerbaijan* 47145/14 (ECHR, 19 July 2018); *Yunusova and Yunusov v. Azerbaijan* (No2), Application no. 68817/14, (ECHR, 16 October 2020), *Rasul Jafarov v Azerbaijan*, Application no. 69981/14, (ECHR, 4 July 2016);

<sup>10</sup> *Rashad Hasanov and others v Azerbaijan*, App nos. 48653/13 and 3 others, (ECHR, 07 September 2018); *Azizov and Novruzlu v Azerbaijan*, Application nos. 65583/13 and 70106/13, (ECHR, 28 May 2016); *Ibrahimov and Mammadov v Azerbaijan*, Application nos. 63571/16 and 5 others, (ECHR, 13 June 2020);

<sup>11</sup> *Khadija Ismayilova v. Azerbaijan* (No.2), Application no. 30778/15, (ECHR, 27 July 2020)

<sup>12</sup> *Ilgar Mammadov v Azerbaijan*, Application no. 15172/13, (13 October 2014); *Natig Jafarov v. Azerbaijan*, App no. 64581/16, (ECHR, 07 February 2020);

<sup>13</sup> CoE, ‘Guide on Article 18 of the European Convention on Human Rights’, (2022), para 61,

[https://www.echr.coe.int/Documents/Guide\\_Art\\_18\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_18_ENG.pdf) (Article18 case-law)

*Natig Jafarov* (n10), paras. 64-6, 70-1; *Rashad Hasanov and others* (n8) paras. 122-7; *Aliyev* (n7), paras 28-39, 223; *Mammadli* (n7) para 100; *Ibrahimov and Mammadov* (n8), paras. 90-9, *Yunusova and Yunusov* (n7), paras. 187-95; *Ismayilova* (n9) paras. 114-120

<sup>14</sup> *Ibid*

<sup>15</sup> ECHR, Article 18

<sup>16</sup> Council of Europe, *Collected Edition of the ‘Travaux Préparatoires’ of the European Convention on Human Rights* (the Hague 1975) Vol ii, pages 60–62;

Aikettrini Tsampi, ‘The new doctrine on misuse of power under Article 18 ECHR: Is it about the system of contre-pouvoirs within the State after all?’, (2020), *Netherlands Quarterly of Human Rights*, vol.38-2, p 136;

and the foundations of human rights.<sup>17</sup> Article 18 cannot be applied alone and needs to be considered within the conjunction of violation of other human rights in the document.<sup>18</sup> However, the state may be in breach of Article 18 even if there has not been a violation of other rights in conjunction.<sup>19</sup>

Thus, ECtHR finds the violation of article 18 when the threshold is met to believe that the member State not only failed to prove a legitimate aim but also acted in bad faith and infringed the rights of applicants with an ulterior and or predominant purpose, such as muzzling the dissent which is not permitted under the provisions in the Convention.<sup>20</sup> Such findings may well highlight worrying undemocratic tendencies, power disbalances and institution failures in the given country which pose threat to the overall protection of human rights<sup>21</sup>

Azerbaijan is infamously one of the ‘repeat offenders’ of the article where the Court has delivered 11 judgements as of July 2022, where it found the ulterior and or predominant purpose by the country.<sup>22</sup> Unsurprisingly, the Court has found similar motives in the cases of the *Mammadli group* where it highlighted the misuse of the criminal justice system to silence the applicants and touched upon the matter of independence of the judiciary system which implies power disbalance between the executive power and the prosecuting authorities and judiciary.<sup>23</sup>

Remarkably, upon the examination of the cases, ECtHR found that domestic courts failed to comprehensively investigate the allegations presented by prosecuting authorities, could not establish ‘reasonable suspicion’ and merely copied and passed on judgements regarding the arbitrary arrest and extension of pre-trial detention of applicants based on applications by prosecuting authorities.<sup>24</sup>

In *Aliyev v Azerbaijan* and other cases in the group, the Court made appalling comments on the matter of the functioning of the judiciary and possible institutional failures in Azerbaijan<sup>25</sup> by mentioning that:

“Domestic courts’ role was “Limited to automatic endorsement of the prosecution’s applications without any genuine and independent review of the “lawfulness” of the applicant’s detention”<sup>26</sup>

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<sup>17</sup> Corina Heri, ‘Loyalty, Subsidiarity, and Article 18 ECHR: How the ECtHR Deals with Mala Fide Limitations of Rights’, (2020), *European Convention on Human Rights Law Review*, vol.1, iss.1, page 26

<sup>18</sup> Tsampi (n14), 143

<sup>19</sup> *Ibid*

<sup>20</sup> Tsampi (n14) 135-6; Heri (n15) 26

<sup>21</sup> Tsampi (n14), 136

<sup>22</sup> Tsampi (n14), 141; Article 18 case-law (n11)

<sup>23</sup> *Aliyev* (n7), para 172; *Rashad Hasanov and others* (n8), para 125; *Mammadov* (n10), para 143;

*Rasul Jafarov* (n7), para 162; *Mammadli* (n7), para 104; *Natig Jafarov* (n10), paras. 64-65;

*Ibrahimov and Mammadov* (n8), paras. 152-8; *Khadija Ismayilova* (n9), paras. 113-114; *Yunusova and Yunusov* (n7), paras. 187-188

<sup>24</sup> *Aliyev* (n7) paras. 164, 172, 208; *Mammadov* (n10) paras 100, 95-8, 117-8; 143-4; *Mammadli* (n7) para 65-6,75; *Natig Jafarov* (n10) paras. 50, 64-66, 70-1; *Rashad Hasanov and others* (n8) 107; *Ibrahimov and Mammadov* (n8), paras. 131-3; *Yunusova and Yunusov* (n7), paras. 112-4, 117; *Ismayilova* (n9) paras. 83-85, 91; *Rasul Jafarov v. Azerbaijan* (n7) para 143

<sup>25</sup> Tsampi (n14), 148-150

<sup>26</sup> *Aliyev* (n7) para 172; *Mammadli* (n7) paras. 117-8; *Rasul Jafarov v. Azerbaijan* (n7) para 143; *Mammadli v. Azerbaijan* (n7) para 144; *Ismayilova* (n9) para 91; *Yunusova and Yunusov* (n7), para 117

Adding up on the institutional failures in various cases, the Court also noted that the actions of the office of the General Prosecutor was in violation of the principle of the presumption of innocence for issuing pre-emptive and smearing statements together with the Ministry of Internal Affairs and submitting groundless and poorly argued applications.<sup>27</sup>

While the Government in its arguments claimed these cases to represent isolated incidents, the Court, building up on its own precedent, repeatedly debunked such claims by highlighting the patterns of arbitrary arrests, stigmatization campaigns, criminalizing human rights work sometimes even accompanied by degrading and inhumane behaviour alongside unlawful application of domestic laws to discourage the work of the civil society, human rights defenders and government critics in Azerbaijan which translated as ulterior purpose not prescribed under the Convention.<sup>28</sup>

While commenting on the supervision procedures by the Committee, the Court, considering the nature of the pattern of violations, also noted that Azerbaijan's priority should be safeguarding government critics from arbitrary arrest and detention and any measure put forward must aim for

“the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non-repetition of similar practices in the future”.<sup>29</sup>

These explicit affirmations by the high-profile European Court serve well as a tool for outsiders to grab the level of systemic issues in Azerbaijan in terms of general disrespect towards human rights and the democratic way of governance.

While both individual and general measures are inseparably important parts of a successful implementation, the failure in fulfilment of general measures may highlight deeper issues where execution of individual measures may reduce the seriousness of the violation but still not necessarily translate as comprehensive systemic changes. Thus, the following paragraph focuses on the handling of general measures by Azerbaijan in the *Mammadli group* of cases.

### **Implications of continuously failing general measures**

In the *Mammadli group* of cases, the communication processes started in 2014 where overall communication has been continuing for 8 years. However, as the paragraphs below explore, Azerbaijani authorities have acted reluctantly, demonstrated no political will towards the solutions and therefore have failed to provide satisfactory results in terms of handling general measures to cure the root causes in the domestic system.

During the communication on the implementation of the judgement, the Committee under its rule of procedures receives information from the applicants, the respondent government and non-governmental organizations.<sup>30</sup> Considering the nature of the findings by the Court in the

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<sup>27</sup> *Mammadov* (n10), paras. 127-8; *Khadija Ismayilova* (n9), paras. 97-98

<sup>28</sup> *Natig Jafarov* (n10), paras. 64-6, 70-1; *Rashad Hasanov and others* (n8) paras. 122-127; *Aliyev* (n7), paras 28-39, 223; *Mammadli* (n7) para 100; *Ibrahimov and Mammadov* (n8), paras. 90-9, *Yunusova and Yunusov* (n7), paras. 187-95; *Ismayilova* (n9) 114-120; Article 18 case-law (n11), para 61

<sup>29</sup> *Aliyev* (n7), paras. 226-228

<sup>30</sup> Council of Europe Committee of Ministers (CoE CM), ‘Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (Adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies and amended on 18 January 2017

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at the 1275th meeting of the Ministers' Deputies and on 6 July 2022 at the 1439th meeting of the Ministers' Deputies)', (2006), CM/Del/Dec (2006)964/4.4-app4consolidated, Rules 8-9, <https://rm.coe.int/09000016806dd2a5>

*Mammadov case*, the Committee in its first decision in 2014, during the execution of the judgement, alongside immediate individual measures called the Government to take effective steps to prevent arbitrary criminal proceedings and ensure effective judicial review without clear measures being set-out.<sup>31</sup>

While the Committee and engaging third-party NGOs had repeatedly reiterated the need for information provided by the Government on general measures, the dialogue focused on individual measures such as the release of Ilgar Mammadov and Rasul Jafarov with the Government seemingly ignoring calls for general measures. As one of the many examples, in its 1265<sup>th</sup> meeting in 2016, the Committee expressed its grave concerns on the continuing silence of authorities in terms of providing information on any steps taken regarding the general measures.<sup>32</sup>

It was only in 2017 that Government started to respond to long-awaiting calls on general measures with Action Plans<sup>33</sup> followed by subsequent communications where it enlisted a number of legislative amendments and reforms, capacity-building initiatives for various authorities and other commitments. However, these steps put forward by the Government which it considers necessary for preventing the reoccurrence of misuse of criminal law to punish government critics have been generally futile, inefficient and have been subject to criticism by both the Committee and the NGOs engaging in the dialogue.

### *Legislative changes and reforms*

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<sup>31</sup> CoE CM, ‘CM Decision in Ilgar Mammadov against Azerbaijan App no. 15172/13’, (2014), CM/Del/Dec (2014)1214/1, paras. 5-7,

[https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2014\)1214/1](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2014)1214/1), (CM Decision; 1214<sup>th</sup> Meeting)

<sup>32</sup> CoE CM, ‘H46-3 Ilgar Mammadov v. Azerbaijan (Application No. 15172/13); Supervision of the execution of the European Court’s judgments’, (2016), CM/Notes/1273/H46-3,

<https://hudoc.exec.coe.int/eng?i=CM/Notes/1273/H46-3E>;

CoE DEJ, ‘Communication from a NGO (Helsinki Foundation for Human Rights, Public Association for Assistance to Free Economy) (25/02/2015) in the case of Ilgar Mammadov against Azerbaijan (Application No. 15172/13)’, (2015), DH-DD (2015)264, 265-7,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)264E](https://hudoc.exec.coe.int/eng?i=DH-DD(2015)264E) (Joint NGO submission 2);

CoE DEJ, ‘Communication from a NGO (Freedom Now) (17/08/2015) in the case of Ilgar Mammadov against Azerbaijan (Application No. 15172/13)’, (2015), DH-DD (2015)844, 7-10,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2015\)844E](https://hudoc.exec.coe.int/eng?i=DH-DD(2015)844E), (Freedom Now submission)

CoE DEJ, ‘Communication from an NGO (International Partnership for Human Rights (IPHR)) (12/02/2020) in the ILGAR MAMMADOV GROUP v. Azerbaijan (Application No. 15172/13)’, (2020), DH-DD (2020)178, paras. 6-31,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)178E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)178E) (IPHR submission);

CoE DEJ, ‘Communication from NGOs (Amnesty International, European Human Rights Advocacy Centre) (27/04/2020) in the Ilgar Mammadov Group v. Azerbaijan (Application No. 15172/13)’, (2020), DH-DD (2020)405, 10-12,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)405E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)405E) (Joint NGO submission 3);

CoE CM, ‘H46-3 Ilgar Mammadov v. Azerbaijan (Application No. 15172/13) Supervision of the execution of the European Court’s judgments’, (2016), CM/Notes/1265/H46-3, 3,

<https://hudoc.exec.coe.int/eng?i=CM/Notes/1265/H46-3E>

<sup>33</sup> CoE DEJ, ‘Communication from Azerbaijan concerning the case of Ilgar Mammadov v. Azerbaijan (Application No. 15172/13)’, (2017), DH-DD (2017)172,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2017\)172E](https://hudoc.exec.coe.int/eng?i=DH-DD(2017)172E);

CoE DEJ, ‘Action plan (20/09/2019) Item reference: Communication from Azerbaijan concerning the ILGAR MAMMADOV group of cases v. Azerbaijan (Application No. 15172/13)’, (2019), DH-DD (2019)1033,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1033E](https://hudoc.exec.coe.int/eng?i=DH-DD(2019)1033E) (Action Plan 2)

In different action report and communications to the Committee, the Government have mentioned several legislative amendments made to address the issues raised by the Court, namely to get rid of the practice of arbitrary arrests, increase the independence of judiciary and practical changes.

In its Action Report dating September 2019, the Government mentioned a number of “progressive institutional and legislative actions taken”<sup>34</sup> to increase the judiciary’s independence and fight corruption. Incredibly, most of these changes date back to even before the first judgement in the *Mammadov case*, thus could not be objectively considered as an action taken on the basis of the violations found by the Court and clear expression of authorities to cure the deep systemic issues.<sup>35</sup> The Government has resorted to such an approach in other communications as well.<sup>36</sup>

The Government has also repeatedly communicated the ‘executive order’ on the improvement of operation of the penitentiary, humanization of penal policies and extension of the application of alternative sanctions envisioned by the President of Azerbaijan as a positive step forward in terms of general measures.<sup>37</sup> While the executive order covers the needed safeguards in terms of establishing reasonable suspicion and prolonging remand in pre-trial detention to some extent, it mostly deals with irrelevant issues contrary to the points raised by the Court and the Committee. Namely, further amendments arising from the order are on decriminalising minor offences, introducing of probation services and others that fail to be relevant to the scope of issues in question and simply do not resolve issues with arbitrary arrests and prolonged pre-trial detention and or misuse of the criminal system.<sup>38</sup> Moreover, the executive order may only play a role of guiding principles whereas not provide reasonable accountability mechanisms for omissions and repeated misuse of the criminal system.<sup>39</sup>

The presidential decree ‘on deepening of reforms in the judicial legal system’ is also put forward by the Government in numerous communications as a tool to further reform the judicial system, particularly to increase its independence.<sup>40</sup> However, the measures arising from the decree mostly dealt with institutional changes in the judiciary system such as the number and salaries and avoided curing the core of the problems.<sup>41</sup> The decree further included the introduction of audio and video recordings in court trials, opportunities for forensic examination and electronization of the judiciary system.<sup>42</sup> However, initially, these new features were put in use in other proceedings than criminal proceedings which bear more significance considering the retaliatory tendencies authorities were accused of using to

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<sup>34</sup> Action Plan 2 (n31), see Annex 3

<sup>35</sup> IPHR submission (n42), para 15

<sup>36</sup> CoE DEJ, ‘Communication from the authorities (20/05/2022) in the case of Mammadli v. Azerbaijan (Application No. 47145/14)’, (2022), DH-DD (2022)548, 2-4, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)548E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)548E) (Submission of Authorities May 2022)

CoE DEJ, Communication from an NGO (Election Monitoring and Democratic Studies Centre) (30/05/2022) in the case of Mammadli v. Azerbaijan (Application No. 47145/14), (2022), DH-DD (2022)614, paras. 15-16, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)614E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)614E) (EMDS submission, May 2022)

<sup>37</sup> Action Plan 2 (n31), 6

<sup>38</sup> Action Plan 2 (n31), 6, IPHR submission (n30), paras. 16-20

<sup>39</sup> IPHR submission (n30), paras. 17-18

<sup>40</sup> Action Plan 2 (n31), 7-9

<sup>41</sup> IPHR submission (n30), para 19

<sup>42</sup> CoE DEJ, ‘Communication from the authorities (22/02/2021) concerning the case of Mammadli group v. Azerbaijan (previously Ilgar Mammadov group) (Application No. 47145/14), (2021), DH-DD (2021)220, 4-6, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)220E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)220E)



silence critics.<sup>43</sup> Moreover, domestic NGOs also indicated the failure of judges in complying with compulsory recording provisions deriving from the decree.<sup>44</sup>

The Government also mentioned amendments made into various domestic codes of proceedings where it indicated reduced sanctions for some articles of which the applicants were found in breach. However, reducing the sanction does not guarantee the prevention of the reoccurrence of misuse of the criminal system but only may reduce the harm done by unlawful application of laws. In general, such legal measures put forward by the Government have mostly been insufficient and irrelevant to the much-needed safeguards protecting the government critics to be targeted by political persecution.

### *Capacity-building efforts*

In numerous communications, the Government presented capacity-building trainings and awareness-raising activities as tools to change the practice of retaliatory persecutions and misuse of the criminal law. Different trainings included the staff of the General Prosecutor's office, various levels of courts and other relevant institutions.<sup>45</sup>

Accordingly, such measures are sought to educate and change the practice of public servants and judges regarding human rights and freedoms. However, there are several issues on trainings as a cure to systemic issues.

Firstly, Article 18 violations in the *Mammadli group* of cases indicate the high-level retaliatory persecutions concerted in cooperation among various branches of the government and is not the sample of negligent or ruthless application of the law by a single institute or court. Nature of violations and recommendations put forward by the Committee and NGOs all point to the required political will to effectively reform the judiciary system. The capacity-building trainings do not bear significance for handling the core of the issues, they could have only played a role of complementary measures and do not promise many changes in the absence of meaningful and effective reforms as examined throughout this section of the paper.

Moreover, if we are to believe in the positive power of such capacity-building efforts, there is no transparent mechanisms to monitor and measure the participants, quality and effectiveness of such trainings. Consideration of and integration of the case-law of the ECtHR into different National Action Plans have also been put forward by the Government as solutions to the persistent tendencies of misuse of criminal law. Despite being a good sign, such commitments carry only formal characteristics and could not be considered as promising improvements against the backdrop of unchanging practice and disregard to human rights in the country.

While Government have indicated different efforts of trainings and awareness raising issues alongside other formal commitments conducted throughout the implementation period, the

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<sup>43</sup> IPHR submission (n30), para 20

<sup>44</sup> CoE DEJ, 'Communication from an NGO (Election Monitoring and Democratic Studies Centre) (11/10/2021) in the case of *Mammadli v. Azerbaijan* (Application No. 47145/14)', (2021), DH-DD (2021)1120, para 16, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1120E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1120E) (EMDS submission November 2021)

<sup>45</sup> Action Plan 2 (n31), 7-8; CoE DEJ, 'Communication from the authorities (25/05/2021) concerning the *Mammadli group of cases v. Azerbaijan* (Application No. 47145/14)', (2021), DH-DD (2021)530, 3, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)530E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)530E) (Submission of Authorities May 2021)

general practice of the authorities in terms of political persecutions and misuse of the criminal system has remained greatly unchanged.

The practice of misusing criminal law has been in place in Azerbaijan throughout the execution period. Both domestic<sup>46</sup> and international<sup>47</sup> human rights organizations, intergovernmental bodies Parliamentary Assembly of the Council of Europe's rapporteur on reported cases of political prisoners<sup>48</sup> in Azerbaijan and other international stakeholders have repeatedly mentioned the general disregard of authorities toward the fundamental human rights and freedoms and worrying practice of political persecutions in Azerbaijan.<sup>49</sup>

Accordingly, different human rights groups indicated the misuse of criminal proceedings against government critics, human rights defenders, journalists, civil society activists and other democracy advocates where a number of political prisoners oscillated between 30 and over 100 people according to various credible reports.<sup>50</sup>

### *Other commitments*

Judicial-Legal Council has played an integral role in the arguments of the Government on efforts to increase the independence of the judiciary. It has been presented as a "self-governing" independent body within the judiciary system tasked with improving judicial independence and efficiency.<sup>51</sup> The Government has increased the authorities of the JLC over time where it now oversees and submits relevant applications to the Parliament on the appointment of the judges to lower-level courts, monitors the work of the courts and judges and develops safeguarding measures to protect judges from external pressure. However, there are several issues with the JLC.

Despite being presented as a self-governing body, the head of the JLC is the Minister of Justice who is a direct subordinate of the head of the executive branch, the president of Azerbaijan.<sup>52</sup> Such conflict of interest puts the very function of the JLC under question

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<sup>46</sup> CoE DEJ, 'Communication from an NGO (Election Monitoring and Democratic Studies Centre) (27/04/2021) in the case of Mammadli group v. Azerbaijan (Application No. 47145/14)', (2021), DH-DD (2021)487, para 17, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)487E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)487E) (EMDS Submission, April 2021)

<sup>47</sup> CoE DEJ, 'Communication from NGOs (Amnesty International, the Baku Human Rights Club, the Election Monitoring and Democracy Studies Centre, the European Human Rights Advocacy Centre, the European Implementation Network, the Human Rights House Foundation, the International Partnership for Human Rights, the Legal Education Society and the Netherlands Helsinki Committee) (22/10/2020) and reply from the authorities (02/11/2020) in the Mammadli group of cases v. Azerbaijan (Application No. 47145/14)', (2020), DH-DD(2020)971, paras. 5-10, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)971E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)971E) (Joint NGO submission);

IPHR submission (n30); Joint NGO submission 2 (n30); Freedom Now submission (n30); Joint NGO submission 3 (n30)

<sup>48</sup> Parliamentary Assembly of the Council of Europe, 'Reported cases of political prisoners in Azerbaijan', (2020), Resolution 2322(2020),

<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28584&lang=en>

<sup>49</sup> Joint NGO submission (n45)

<sup>50</sup> Remezait R., Ismayil Z., 'Shrinking Space for Civil Society in Azerbaijan', (2016), 9-17,

[Shrinking Space for Civil Society in Azerbaijan](#); Joint NGO submission (n45)

<sup>51</sup> Judicial-Legal Council of the Republic of Azerbaijan, 'Information of Judicial-Legal Council', (2017),

[http://jlc.gov.az/e\\_view\\_index.php?id=330](http://jlc.gov.az/e_view_index.php?id=330)

<sup>52</sup> CoE DEJ, 'Communication from the authorities (08/11/2021) concerning the Mammadli group of cases v. Azerbaijan (Application No. 47145/14)', (2021), DH-DD (2021)1169, 2-4,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1169E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1169E); Submission of Authorities May 2022 (n34) 7-10; EMDS Submission November 2021 (n42), paras. 17-23

where the *Mammadli group* of cases bear significance for the indication of pressure put on the judiciary system by the executive branch.<sup>53</sup> The Government has been silent to the desperate calls by the Committee on the election of the head of the JLC from among its judge members.<sup>54</sup>

Moreover, the JLC has given only advisory authorities over the appointment of judges to lower level of courts where judges of high-ranking courts, who are also the JLC members such as the head of the Supreme Court, are legally and practically appointed by the president.<sup>55</sup> Other issues regarding the JLC which are also mentioned by the Committee, include the absence of transparency in the declaration of assets of judges while the Government in a usual approach enlists a large number of formal and institutional changes made in the judiciary system and seemingly ignores calls on pressing shortcomings of JLC.<sup>56</sup>

In general, the Government has provided a large number of different steps taken with an aim of implementing general measures put forward by the Committee. Noteworthy, these steps if nothing else, indicates the capacity of authorities to bring together efforts and coordinate the implementation process through different governmental bodies, judiciary and prosecuting authorities and legal documents.

On the other hand, however necessary, such measures usually fail to address core issues, remain as formal commitments and or bear significantly low relevance to the issue at hand which therefore signals a manipulative approach a State may adhere to. Moreover, considering the Court findings on article 18, the delay in the execution of general measures is yet another element which may raise flags about the possible reluctance in complying with the Court rules by the State. In essence, the Government is expected to deprive itself of the opportunity and mechanism by installing safeguarding measures protecting the domestic system to be misused for political gains.

Thus, in the case of Azerbaijan, the non-implementation record could not be argued to happen because of technical difficulties a government may observe in the execution process but may well imply the deeper political issues and absence of a will or a 'good faith'.

Unsurprisingly, despite the non-exhaustive number of administrative steps reflected in sometimes lengthy government communications, the Committee of Ministers has so far rarely found the steps completely satisfactory and agreed to terminate the supervision of the cases or even specific general measures.

### **Incomplete individual measures and discriminative approach**

The communication between the parties on the execution of ECtHR decisions in the *Mammadli group* of cases included three major individual measures. Accordingly, throughout the implementation period, the Committee called on

- releasing unlawfully detained applicants,

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<sup>53</sup> EMDS submission May 2022 (n34), paras. 13-14

<sup>54</sup> CoE CM, 'H46-2 Mammadli group v. Azerbaijan (Application No. 47145/14)', (2022), CM/Del/Dec (2022)1436/H46-2, paras. 9, [https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2022\)1436/H46-2E](https://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2022)1436/H46-2E); EMDS submission May 2022 (n34), paras. 13-14

<sup>55</sup> EMDS submission, May 2022 (n34), paras. 13-14

<sup>56</sup> EMDS submission, May 2022 (n34); paras. 13-14; Submission of Authorities May 2021 (n43)

- restoring the violated rights of applicants,
- paying compensation.

This section will break down each individual measure and the record of the Government in implementing them while highlighting the troubling patterns such as general reluctance combined with selective justice and manipulation

*Release of unlawfully detained applicants; delay and reluctance*

The first case in the group involved the case of *Mammadov* where the Committee from the very first meeting on the execution called on authorities, among others, to immediately release the applicant without delay as an urgent and important measure.<sup>57</sup> Notably, the applicant was the only one who was serving in prison when the judgement was delivered whereas Rasul Jafarov was pardoned on the day after the ECtHR judgement.

Over time, the Committee had time and again called authorities to abide by urgent measures and grant the release of the applicant whereas the Government continued to refer to technical procedures and decisions of different levels of the domestic courts in the process.<sup>58</sup>

Unsurprisingly, for the first time in the history of the Court, infringement proceedings were launched against Azerbaijan in 2017.<sup>59</sup> According to Article 46 § 4 of the ECHR, the Committee, based on frustration arising from years of non-implementation performance, transmitted the case to the Court for it to decide whether Azerbaijan has failed its obligation under article 46 § 1 of the Convention to abide by the first *Mammadov* judgement.<sup>60</sup> While the proceedings were accompanied by the release of the applicant, the Committee did not withdraw the case in light of continuing consequences of the arbitrary arrest of the applicant.<sup>61</sup> Remarkably, in its assessment of the action and omissions of Azerbaijan, the Court also referred to the ARSIWA while citing the failure of Azerbaijan to successfully cease the continuing violations, restore violated rights and ensure the future non-repetition etc.<sup>62</sup> In the landmark judgement, examining the status of the execution, the Court decided that domestic courts failed to uphold the findings of ECtHR, and did not eliminate the negative consequences of violation of the rights of the applicant and Azerbaijani authorities indeed failed to comply with the Court judgement in good faith.<sup>63</sup>

Touching upon the slow progress and number of ineffective measures presented by the Government, the Court also highlighted the timing of essential decisions such as the release of the applicant which post-dated the transmission of the cases to be reviewed by it.<sup>64</sup> Additionally, partaking in communications on the decision, the Committee went so far as to

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<sup>57</sup> CM Decision; 1214<sup>th</sup> meeting (n29), para 1

<sup>58</sup> European Court of Human Rights, Grand Chamber Judgment of 29 May 2019, Proceedings under Article 46/4 in the Case of Ilgar Mammadov v. Azerbaijan, App No. 15172/13, paras 39-47, 53 (judgement on Article 46&4 proceedings)

<sup>59</sup> CoE CM, 'Interim Resolution CM/ResDH(2017)429 on the Execution of the judgment of the European Court of Human Rights in Ilgar Mammadov against Azerbaijan (Adopted by the Committee of Ministers on 5 December 2017 at the 1302nd meeting of the Ministers' Deputies), 2017, CM/ResDH(2017)429, 1-2, <https://hudoc.exec.coe.int/eng?i=001-179899>; judgement on Article 46&4 proceedings (n56), para 67

<sup>60</sup> Judgement on Article 46&4 proceedings (n61), para 1

<sup>61</sup> *Ibid*, para 145

<sup>62</sup> *Ibid*, paras. 81-88, 150-151, 164; ARSIWA, articles 31, 34-37

<sup>63</sup> Judgement on Article 46&4 proceedings (n61), paras. 205,8, 14-17

<sup>64</sup> *Ibid*, paras. 205-217

explicitly comment on the reluctance of Azerbaijan by stating that they showed “no clear sign or intention”<sup>65</sup> to take necessary steps since the start of the process.

Thus, despite clearly outlined ECtHR judgements, the immediate nature of the measure and an immense number of back-and-forth communications between the applicant, authorities, committee and third-party NGOs on the release of I. Mammadov, incredibly, it took 4 years for Government to finally release the applicant still on conditional terms accompanied by a probation period and travel ban to be lifted later on.<sup>66</sup>

The infringement procedures were eventually abandoned following the acquittal the applicant received in 2020, after 6 years following the judgement while leaving unanswered questions on the effectiveness of infringement processes if proceeded otherwise.<sup>67</sup> Thus it must be noted that, in the overall picture, the Government enjoyed fruitless communications and calls by all sorts of parties, have numerous times cited procedural deficiencies in domestic law as a hindrance to release, achieved huge delays without consequences and released in a dubious timing which demonstrated the possibility of action that could have been done when it was first recommended. h

### *Restoring the violated rights of applicants*

Following the findings of the Court on arbitrary arrests and prolonged pre-trial detention terms without proper evidence alongside ulterior purpose to silence government critics, the Court and the Committee both emphasized the importance of achieving *restitutio in integrum* for applicants. which would entail erasing all criminal records and related consequences of unlawful arrests.<sup>68</sup> However, authorities have long delayed the process of granting full acquittals to only a handful of applicants whereas the implementation process was accompanied by reluctance, discrimination and manipulation from the Government’s side.

Currently, only 6 of the 16 applicants in the group have been acquitted.<sup>69</sup> Remarkably, the first instance of any applicant receiving an acquittal post-dated the parliamentary elections where previous and continuing criminal records prevented all applicants from participating in elections and pre-dated the deadline presented by the Committee

As mentioned above, opposition politician Ilgar Mammadov was released in 2018 however on conditional terms which were lifted a year after release.<sup>70</sup> Nevertheless, domestic courts found his sentence only ‘served’ and did not initially give acquittal which effectively

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<sup>65</sup> *Ibid*, paras. 122

<sup>66</sup> *Ibid*, paras. 71-73, 214-217

<sup>67</sup> CoE CM, Resolution CM/ResDH(2020)178 Execution of the judgments of the European Court of Human Rights Three cases against Azerbaijan, (2020), CM/ResDH(2020)178, <https://hudoc.exec.coe.int/eng?i=001-204747>;

Toby Collis, ‘The impact of the infringement proceedings in the Mammadov/Mammadli group of cases; a missed opportunity’, (2021), Strasbourg Observers, <https://strasbourgobservers.com/2021/05/28/the-impact-of-infringement-proceedings-in-the-mammadov-mammadli-group-of-cases-a-missed-opportunity/>

<sup>68</sup> CoE CM, H46-3 Ilgar Mammadov group v. Azerbaijan (Application No. 15172/13) Supervision of the execution of the European Court’s judgments, (2020), CM/Del/Dec (2020)1377bis/H46-3, para 3, [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2020\)1377bis/H46-3E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2020)1377bis/H46-3E)

<sup>69</sup> *Mammadov* (n10), *Rasul Jafarov* (n7), *Rashad Hasanov and others* (n8)

<sup>70</sup> Meydan TV, ‘Opposition party leader Ilgar Mammadov’s conditional release suspended’, (2019), <https://d9mc3ts4czbpr.cloudfront.net/en/article/opposition-party-leader-ilgar-mammadovs-conditional-release-suspended/>

deprived him and in fact all applicants in the group of the right to run as a candidate in the 2019 Municipal and 2020 Parliamentary Elections in Azerbaijan despite the calls by the Committee.<sup>71</sup> He only got such acquittal by the Supreme Court of Azerbaijan after persistent calls by the Committee within the infringement procedures in 2020.<sup>72</sup> Accordingly, the Committee in March 2020 adopted a resolution where it revisited the record of non-compliance of authorities, reiterated the urgent need to restore the violated rights of applicants by granting acquittal and set the deadline of 30 April 2020 for Government to communicate developments.<sup>73</sup> Noteworthy, applicants Ilgar Mammadov and Rasul Jafarov were acquitted by the Supreme Court just a week before the deadline. Interestingly, the Supreme Court of Azerbaijan for the first time put a precedent of erasing the decisions of domestic courts based on the ECtHR decisions which in essence paved the way for a similar application in the cases of the remaining applicants as well.

Subsequently, 4 other applicants in *Rashad Hasanov and others* received acquittals in 2021, 8 years after their unlawful imprisonment.<sup>74</sup> However, 10 applicants still await *restitutio in integrum* in their cases despite years after their imprisonment and repeated calls by the Committee. The Government has failed to provide a reasonable ground for such delays where the Supreme Court's precedent of acquitting applicants based on ECtHR decisions suggests a feasible avenue. At times, authorities sought to use COVID-19-related delays as an excuse, where it did not add up considering the very cases of reviews and granted acquittals to Ilgar Mammadov and Rasul Jafarov by the Supreme Court coincided with the same time period.<sup>75</sup>

Moreover, the same Supreme Court acted in a rather quick fashion (just a year after the ECtHR judgement) in reviewing the case of another applicant from Azerbaijan (in the case of *Aslan Ismayilov v Azerbaijan*)<sup>76</sup> while the cases of remaining applicants were yet to be examined.<sup>77</sup> Applicants and engaging third-party NGOs have pointed to this pattern of groundless selective justice and continuously condemned authorities to discriminate among the applicants.<sup>78</sup>

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<sup>71</sup> CoE CM, H46-2 Ilgar Mammadov group v. Azerbaijan (Application No. 15172/13) Supervision of the execution of the European Court's judgments, (2019), CM/Del/Dec (2019)1362/H46-2, para 3, [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2019\)1362/H46-2E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2019)1362/H46-2E);

The Voice of America, 'Zaur Gurbanli: The main goal is not to let us into the election', (2020), <https://www.amerikaninsesi.org/a/zaur-qurbanli%C4%B1-%C9%99sas-m%C9%99qs%C9%99d-bizi-se%C3%A7kiy%C9%99-buraxmamaqd%C4%B1r-bu-siyasi-q%C9%99rard%C4%B1r/5233592.html>

<sup>72</sup> CoE DEJ, Communication from Azerbaijan concerning the cases of Ilgar Mammadov v. Azerbaijan (Application No. 15172/13) and Rasul Jafarov v. Azerbaijan (Application No. 69981/14), (2020), DH-DD (2020)365, 2, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2020\)365E](https://hudoc.exec.coe.int/eng?i=DH-DD(2020)365E)

<sup>73</sup> CoE CM, 'Interim Resolution CM/ResDH(2020)47 on execution of the judgments of the European Court of Human Rights in Ilgar Mammadov group against Azerbaijan', (2020), CM/ResDH(2020)47, <https://hudoc.exec.coe.int/eng?i=001-202200>

<sup>74</sup> CoE CM, Resolution CM/ResDH(2021)426 Execution of the judgment of the European Court of Human Rights Rashad Hasanov and Others against Azerbaijan (Mammadli group), (2021), CM/ResDH(2021)426, <https://hudoc.exec.coe.int/eng?i=001-214829>

<sup>75</sup> EMDS Submission, April 2021 (n44), para 10

<sup>76</sup> *Aslan Ismayilov v Azerbaijan* App no. 18498/15, (ECHR, 12 July 2020)

<sup>77</sup> CoE DEJ, 'Communication from an NGO (Election Monitoring and Democratic Studies Centre) (30/05/2022) in the case of Mammadli v. Azerbaijan (Application No. 47145/14)', (2022), DH-DD(2022)614, para 7, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)614E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)614E)

<sup>78</sup> CoE DEJ, 'Communication from an NGO (Election Monitoring and Democratic Studies Centre) (24/02/2022) in the Mammadli group of cases v. Azerbaijan (App No. 47145/14)', (2022), DH-DD(2022)310, para 12-13, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)310E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)310E) (EMDS Submission February 2022)

Noteworthy, the selective application of acquittals raises concerns regarding the discriminative approach of the Government towards the current activities of the applicants. Accordingly, it could be argued that the first two cases of acquittals in 2020 were mostly arising from the unprecedentedly intensified infringement processes and installed deadline in the end. However, after the Committee dropped the infringement procedures, out of the rest – 13 people<sup>79</sup> – only 4 applicants were acquitted who happened not to pursue their then-active work in civil society as of the time of the decision of acquittal. Most of the remaining applicants actively continue their activities in the civil society of Azerbaijan.

Such a discriminative approach could be translated as a stance of the Government to further discourage continuing human rights and journalistic work of remaining applicants while awarding ones that practically avoid actual confrontations or could be perceived as less critical of the Government by it even with what they are legally entitled to. Commenting on the incomplete implementation of the *Mammadli group* of cases in Azerbaijan, applicants – human rights defenders – Intigam Aliyev and Anar Mammadli also mentioned groundless discrimination, condemned the selective justice by authorities and pointed at deliberate actions by the Government to possibly discourage remaining applicants from their human rights work to achieve long-awaited justice.<sup>80</sup>

Also remarkable is that the applicants in *Rashad Hasanov and others* highlighted the discriminative rate of compensation allocated by the Supreme Court in their cases compared to the compensation allocated in the cases of Ilgar Mammadov and Rasul Jafarov.<sup>81</sup>

Additionally, the Government has resorted to manipulating the process in terms of restoring the rights of the applicants. Accordingly, commenting on the absence of acquittals in the cases of remaining applicants, the authorities referred to the expunged criminal convictions of those applicants while claiming it has very little impact on the actual life of applicants.<sup>82</sup> However, it must be noted that the domestic legislation clearly distinguishes the expungement of conviction from acquittal where the former merely means the passage of time since the imprisonment and could not be objectively considered as equal to the legal and psychological advantages a full acquittal would grant.<sup>83</sup>

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<sup>79</sup> In the case of *Natig Jafarov* the criminal charges were dropped against the applicant and he was released. Supervision of the case is closed by the Committee, therefore 13 out of 14 remaining applicants awaited acquittals. See also the Committee resolution; CoE CM, 'H46-2 Mammadli group v. Azerbaijan (Application No. 47145/14)', (2022), CM/Del/Dec(2022)1436/H46-2, para 9, [https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1411/H46-3E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1411/H46-3E)

<sup>80</sup> Turan.az, 'Intigam Aliyev: The Supreme Court acquitted only two of the eight applicants before the European Court', (2020),

<https://www.turan.az/ext/news/2020/4/free/politics%20news/az/123479.htm>;

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<sup>81</sup> CoE CM, Communication from the applicant (25/11/2021) in the case of *Rashad Hasanov (Uzeyir Mammadli) v. Azerbaijan* (Application No. 48653/13) (Mammadli group)', (2021), DH-DD(2021)1283, 1-3, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1283E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1283E); EMDS submission February 2022 (n75), para 8

<sup>82</sup> CoE DEJ, 'Communication from the authorities (29/11/2021) concerning the group of cases of Mammadli v. Azerbaijan (Application No. 47145/14)', (2021), DH-DD (2021)1293, 2-3,

[https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)1293E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)1293E); EMDS submission February 2022 (n75), para 10; EMDS submission May 2022 (n34) para 1; Submission of Authorities, May 2022 (n34) 1

<sup>83</sup> EMDS submission, February 2022 (n75), para 10; EMDS submission, May 2022 (n34) para 8

It also must be noted that while the compensation has been the measures by which the authorities complied the most, some applicants had to wait for payment for an average of 2 years.<sup>84</sup> In one case, the applicant in *Ibrahimov and Mammadov*, namely Giyas Ibrahimov received the compensation in full only after setting himself on fire as a protest near the President's Executive Office in 2022, after two years post-dating the ECtHR judgement.<sup>85</sup>

Thus, contrary to what is expected of Azerbaijan in good faith, continuously failing the implementation of the Court judgements qualifies as a stance which is not conformity of its obligations under ECHR. Accordingly, actions and/or omissions that are indisputably attributable to Azerbaijan regarding its existing obligation under an international treaty (ECHR) amount to be in breach of articles 2, 12 and 13 of ARSIWA as well.<sup>86</sup> Particularly, systemic failure in implementation of general measures which are sought to ensure non-repetition of the found violations also contrary to the article 30 of ARSIWA which among others mention that State responsible for the wrongful act must cease the violation if it continues.<sup>87</sup> On other hand articles 31, 34-7 set out measures where State responsible for a wrongful act needs to repair the violated rights in full.

## Conclusion

Azerbaijani authorities have been found in flagrant breach of human rights of government critics with an ulterior purpose to silent dissent voices. It has prolonged the release of and payment of just satisfaction to the applicants despite persistent calls of various stakeholders where the full restoration of rights has not been achieved yet to date. Despite the significance of Article 18 findings, general reluctance and absence of political will by authorities are joined by discriminative and manipulative approaches.

While enjoying the fruitless back and forth communications and abandoned infringement proceedings by the Committee, authorities have created a deadlock in the way of successful delivery of justice where it still delays the process seemingly without any consequences.

Overall, the implementation process in the *Mammadli group* of cases has been accompanied by reluctance, discrimination and manipulation on the Governments side. To sum up, Azerbaijan's apparent refusal to effectively implement the Court decisions is not only contrary to obligations it under ECHR, but also breaches similar provisions of Vienna Declaration and ARSIWA as well.

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<sup>86</sup> ARSIWA, articles 1-2, 12-13; ARSIWA Commentary, articles 1-2, 12-13

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