

The Functioning of the
**Judicial System in
Azerbaijan**
and its Impact on the
**Right to a Fair Trial of
Human Rights Defenders**

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Executive summary

Despite the fact that the Azerbaijani Constitution guarantees the balance of powers within the government's scope of authority, the practical application of these provisions raises concern. Several civil society activists and international organizations, such as the Helsinki Foundation for Human Rights, Netherlands Helsinki Committee and Human Rights Watch, have highlighted the lack of independence of the prosecutor and judiciary from the executive branch in Azerbaijan. The government engages prosecutors and judges to discredit critical voices and uses the criminal justice system as a tool to persecute human rights defenders, journalists and NGOs. Reports of trial proceedings, during which the human rights defenders Intigam Aliyev, Rasul Jafarov, Leyla Yunus and her husband Arif Yunus, as well as the investigative journalist Khadija Ismayilova were tried and sentenced to prison, show that the prosecution of these human rights defenders lacked evidence to arrest, detain and substantiate the charges against them¹. Courts usually embrace the prosecution's (written) submissions, which, according to the ECtHR, limits the judiciary's role to one of mere automatic endorsement of the prosecution's requests².

According to international standards, such as the UN Guidelines on the Role of Prosecutors, public prosecutors must enjoy independence to exercise their duties. Nevertheless, the strict hierarchical relations within the Azerbaijani public prosecution service leave little space for independent decision-making of lower-rank prosecutors. Candidates must serve at least five years with the prosecutor general's office before being appointed as a public prosecutor. This also prevents other legal professionals, such as (recently graduated) lawyers, from entering the prosecution service. Furthermore, neither the selection procedure of medium and senior prosecutors nor the dismissal process of prosecutors is merit-based. In this context, the executive branch exerts significant control over public prosecutors. First, the government has the power to appoint the prosecutor general, with the consent of parliament. Second, reasons for being removed from the profession are overly broad, which enables political authorities to arbitrarily dismiss prosecutors if they oppose instructions from their superiors or government policies in general. Another concern is the periodic report of the prosecutor general, which catalogues the topics that are discussed with the parliament and government but is kept secret.

The Azerbaijani judiciary is also perceived as totally subservient to the executive branch. Although constitutional safeguards for judicial independence exist, according to which judges are bound only by Azerbaijan's constitution and laws, in practice there are strong links between the judiciary and the government. The selection of judges, for instance, is administered by the Judicial Legal Council. The majority of its members is appointed by the government and the Council is presided over by the Minister of Justice, which gives the government significant

¹ The Report on the trial observations is available at, for instance, NHC, 'News', <http://www.nhc.nl/news/news_2015/Fair_trial_for_Azerbaijan___s_prisoners_of_conscience.html?id=290&highlight=+trial> accessed 12 August 2016.

² Rasul Jafarov v Azerbaijan App no 69981/14 (ECHR, 17 March 2016); Mammadov v Azerbaijan App no 15172/13 (ECHR, 22 May 2014).

control over the entire judiciary. Of serious concern is in particular that when judges are appointed for the first time they only serve for a (lengthy) probation period of three years, which is contrary to international standards and criticized by the European Commission for Democracy through Law (“Venice Commission”), as this makes the judges more likely to align with the viewpoints of their superiors and the government to get re-appointed. The independence of judges in Azerbaijan is further weakened by the impeachment process of judges. The judges of the Constitutional Court are not directly selected by a purely judicial, independent and impartial body but by the President of the Republic.

Furthermore, the Azerbaijani law and the legal culture of the judiciary and prosecution enable the executive branch to use the justice system to systematically persecute human rights defenders. The European Court of Human Rights, for instance, condemned this practice as clear violation of Art. 6 of the ECHR.

Introduction

The separation of powers and a working criminal justice system are two fundamental pillars of democratic society. In particular, a well-functioning, independent judiciary is likely to protect and promote human rights, and to hold the government to account for its wrongdoings. On the other hand, a judicial system that lacks safeguards for judicial independence is less likely to uphold human rights and guarantee state accountability. In that case, the criminal justice system can be easily used to silence critical voices.

In 2014-2015, an unprecedented crackdown on (members of) the civil society took place in Azerbaijan, in the course of which dozens of human rights defenders (HRDs), journalists and other critical voices were imprisoned and key human rights organizations were forced to suspend their operations. The judiciary and prosecution are increasingly engaged in the indictment and sentencing of HRDs, thereby using the criminal justice system to persecute those who oppose government policies.

The separation of powers no longer exists in Azerbaijan, since the executive branch heavily infiltrates both parliament and the judiciary³. The judicial branch consists of two superior courts, the Constitutional Court and the Supreme Court, the courts of appeal, civil courts and special tribunals⁴. The public prosecutor office is part of the criminal judicial system.

In practice, the balance of powers, as guaranteed in Azerbaijan's constitution⁵, is abandoned by the government, which exerts significant power over the courts and prosecution. Furthermore, constitutional guarantees, such as protection of the civil rights of HRDs⁶ are not respected in practice. This includes fundamental principles, such as the right to a fair trial, particularly the presumption of innocence, the right to judicial review and *ne bis in idem*, which are enshrined in both the Constitution⁷ and the procedural laws. Prosecutions against HRDs and journalists in 2014-2015 show that the Azerbaijani judiciary failed to abide by these rules⁸.

³ Constitution, art. 7 para 1.

⁴ Constitution, art. 125.

⁵ Constitution, art. 7 para 2.

⁶ Constitution, art. 60.

⁷ Constitution, art. 62.

⁸ Cases of prosecution of human rights defenders are described in the last part of the report.

According to Transparency International, the most corrupt judges of Eastern Europe are those in Azerbaijan⁹. This was also confirmed by a report of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe (PACE), pointing at the high levels of corruption within Azerbaijan's courts which is, in combination with the lack of budgetary autonomy of the judiciary, a threat to their independence. The corruption also has a political dimension, particularly in trials against members of the opposition and HRDs. The PACE Report on the functioning of democratic institutions in Azerbaijan, for example, condemned 'the lack of independence¹⁰ of the judiciary' that remained 'a concern in Azerbaijan, where the executive branch is alleged to continue to exert undue influence. Dubiously motivated criminal prosecutions and disproportionate sentences remain a concern. Fairness of trials, equality of arms and respect for the presumption of innocence are other major concerns'¹¹. PACE expressed particular concern about the increasing practice of filing criminal charges against NGO leaders, journalists and their lawyers. Certain structural arrangements employed by the government to control the judiciary and the role played by courts in trying HRDs exemplifies the way in which judges can be used to silence critical voices.

Methods used to write the present report included desk-based research, trial observations of HRDs cases and interviews, which were conducted with lawyers who practice in Azerbaijan and were involved in trials against HRDs in 2015.

The present report first looks at the international standards on judicial independence, followed by an analysis of the prosecution service and its impact on HRDs in Azerbaijan, and the administrative and organizational underpinnings of judges and factors that can undermine their independence. The last chapter looks at the judiciary and how it fails to uphold the rule of law and state accountability in trials against HRDs, which is largely based on trial observations and interviews held with practitioners¹².

⁹ Deborah Hardoon and Finn Heinrich, 'Global Corruption Barometer 2013: Report' (Transparency International 2013) <<https://www.transparency.org/gcb2013/report>> accessed 12 August 2016.

¹⁰ PACE, Report of the Committee on Legal Affairs and Human Rights, Judicial corruption: urgent need to implement the Assembly's proposals, adopted by the Assembly on 29 January 2016 (9th sitting).

¹¹ PACE, Committee on the Honouring of Obligation and Commitments by Member States of the Council of Europe, The functioning of democratic institutions in Azerbaijan (24 June 2015) para 6.

¹² The trials against Intigam Aliyev and Rasul Jafarov were monitored by the Helsinki Foundation for Human Rights and the Netherlands Helsinki Committee in 2015. As of Intigam Aliyev, hearings were attended on: 23 January 2015, 3 February 2015, 17 February 2015, 3 March 2015, 10 March 2015 and on 21 April 2015. With regard to Rasul Jafarov, this included the hearings on: 15 January 2015, 27 January 2015, 10 February 2015, 24 February 2015, 5 March 2015, 11 March 2015 and 16 April 2015.

I. European standards on the independence and impartiality of the judiciary

The principle of the independence and impartiality of the judiciary is guaranteed by the European Convention of Human Rights (ECHR)¹³ and is an essential precondition to exercise the right to a fair trial efficiently. As the two notions 'independent and impartial' are closely interconnected, the ECtHR ruled that the two requirements are to be considered together when assessing the fairness of proceedings¹⁴. Additionally, the Venice Commission published two reports on the main principles of the independence of judges and prosecutors in 2010¹⁵. Another authoritative document on judicial independence is a recommendation of the Committee of Ministers of the Council of Europe and its explanatory memorandum, which were adopted on 17 November 2010¹⁶.

I.1. Independence of judiciary

The ECtHR developed the following criteria to measure the "independence" of judges:

The manner of appointment of its members and the duration of their term in office

The ECtHR ruled that a mere appointment of judges by parliament or the executive branch does not cast doubt on a judge's independence, provided that the judge is free from undue influence or pressure while carrying out his/her official duties¹⁷.

The existence of guarantees against outside pressures

Judicial independence requires that judges are free from undue internal or external pressure or influence. It is crucial to guarantee that parties are equal before the court. Internal independence, for instance, ensures that a judge takes decisions only on the basis of the constitution and laws and not on the basis of instructions given by superior judges. The absence of sufficient safeguards against such interference into the independence of judges may undermine a judge's independence¹⁸.

¹³ ECHR, art. 6.

¹⁴ Cf. *Findlay v the United Kingdom* App no 22107/93 (ECHR, 25 February 1997).

¹⁵ Venice Commission, Report on the independence of the judicial system. Part I: Independence of judges (16 March 2010); Venice Commission, Report on the independence of the judicial system. Part II: The prosecution service (16 March 2010).

¹⁶ Committee of Ministers, Recommendation CM/Rec(2010)12, Judges: Independence, efficiency and responsibilities (17 November 2010).

¹⁷ *Campbell and Fell v the United Kingdom* Appl. no 7878/77 (ECtHR, 28 June 1984); *Ninn-Hansen v Denmark* Appl. no 28972/95 (ECtHR, 18 May 1999).

¹⁸ *Daktaras v Lithuania* Appl. no. 42095/98 (ECtHR, 17 January 2011); *Moiseyev v Russia* Appl. no. 62936/00 (ECtHR, 9 October 2008).

Appearance of independence of the judiciary

Another requirement to determine the independence of judges is the public trust in the judiciary and the latter's appearance as an independent court. What is at stake is the confidence in the judiciary by the public and above all, by an accused defendant who is facing criminal proceedings. Although the standpoint of an accused is important, it is not decisive; such doubts have to be objectively justified¹⁹. In other words, an 'objective observer' must have serious and reasonable doubts about the independence of a court.

I.2. Impartiality of the judiciary

Impartiality generally indicates the absence of prejudice or bias of the judiciary in their decision-making. The ECtHR distinguishes between subjective and objective approaches in assessing the impartiality of courts. The subjective test refers to the existence of a personal conviction or interest of a given judge in a particular case whereas the objective test determines whether the judge offered sufficient guarantees to exclude any legitimate doubt in this respect²⁰.

The ECtHR held that the personal impartiality of a judge must be presumed unless the contrary is proven. With regard to the proof required, it must be assessed whether the judge has displayed hostility or ill will or a case has been assigned to him/her for personal reasons²¹. In practice, it may, however, be difficult to prove the subjective impartiality of a judge and be easier to measure the objective impartiality of the judge. Under the objective test, when applied to a body sitting as a bench, it must be determined whether there are ascertainable facts, which may raise doubts as to its impartiality. In this context, a decisive factor might be to decide whether there is a legitimate reason to fear that a court lacks impartiality. This fear must then be held to be objectively justified²². Any judge about whom there is a legitimate reason to fear a lack of impartiality must withdraw from a case²³.

The internal organization of a court is also an important factor to take into consideration when assessing the impartiality of the judiciary. In this context, the existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is crucial. The existence of such rules manifests the state's determination to remove all reasonable doubts with regard to the impartiality of judges or courts. They are directed at removing any appearance of partiality and therefore serve to promote the confidence, which the courts in a democratic society must inspire in the public²⁴.

¹⁹ *Incal v. Turkey* Appl. no 22678/93 [ECtHR, 9 June 1998].

²⁰ *Kyprianou v Cyprus* Appl. no 73797/01 [ECtHR, 15 December 2005].

²¹ *De Cubber v Belgium* Appl. no 9186/80 [ECtHR, 26 October 1984].

²² *Padovani v Italy* Appl. no. 13396/87 [ECtHR, 26 February 1993].

²³ *Castillo Algar v Spain*, Appl. No 28194/95, [ECtHR, 28 October 1998].

²⁴ *Micallef v Malta* Appl. no 17056/06 [ECtHR, 15 October 2009].

II. Prosecution authorities in Azerbaijan

According to the recommendations of the Committee of Ministers of the Council of Europe, public prosecutors must enjoy a degree of independence as is necessary for performing his/her official duties and in particular to be able to act, whatever the interests at stake are, “without unjustified interference”²⁵ from any other authority, whether executive or legislative²⁶. However, the prosecution should account periodically and publicly for its activities as a whole²⁷. Such reporting should be based on legal grounds and should serve the public to understand the work of the prosecution. It is an important factor of prosecution accountability.

II.1. Organization of the public prosecution service

The public prosecutor’s office oversees the execution and application of laws, exercises criminal prosecutions and carries out investigations, represents the State in the courts and acts as plaintiff in civil, economic and administrative cases, and lodges appeals against courts’ decisions²⁸. The public prosecutor’s office operates on the principles of single and centralized management, entailing the subordination of territorial and specialized prosecutors to the public prosecutor general²⁹.

The public prosecutor’s office is part of the judicial branch, which is composed of:

- the public prosecutor general’s office,
- the anti-corruption directorate,
- the military prosecutor’s office,
- the public prosecutor’s office of the Nakhchivan Autonomous Republic (NAR),
- the NAR’s military prosecutor’s courts,
- and territorial (district and city court) public prosecutor’s offices, as well as some (higher) education institutions, press offices and other offices taking care of administrative matters³⁰.

The public prosecutor general heads the collegial board of the prosecutor general’s office, a consultative body, which consists of the prosecutor general, his/her deputies and other senior employees. It is responsible for overseeing the fight against crimes and disciplinary measures

²⁵ Unjustified i.e. in cases other than those provided in the law.

²⁶ Committee of Ministers, Recommendation Rec(2000)19, ‘The Role of Public Prosecution in the Criminal Justice System’ (6 October 2000) <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2719990&SecMode=1&DocId=366374&Usage=2>> accessed 12 August 2016

²⁷ Ibidem.

²⁸ Constitution, art. 133; Prosecutor’s Office Act of 7 December 1999, no 767-IQ, art. 4.

²⁹ Constitution, art. 133 para 2.

³⁰ Prosecutor’s Office Act, art. 8.

against senior prosecutors, dealing with important staff problems, discussing drafts of orders and other acts, hearing reports of subordinate prosecutor's offices and considering issues to be lodged with the constitutional court and other questions concerning the activities of the public prosecutor's office³¹.

The prosecutor general, the prosecutor of military matters, the prosecutor of the NAR, the prosecutor of military matters of the NAR, district and specialized prosecutors serve for an initial period of five years. Generally, territorial and specialized public prosecutors cannot be re-appointed in the same district more than twice.

The prosecution, which is strictly hierarchically organized, is divided into nine different ranks and grades³². Generally, public prosecutors first serve as lower-rank public prosecutors. They are overseen by the public prosecutor's office (as are higher-rank public prosecutors) and the execution of all instructions by their superiors is compulsory, which can include changing, abrogating, recalling and substituting their decisions and acts made by them³³.

Thus, the public prosecution service of Azerbaijan seems to leave little space for independent decision-making for lower-rank public prosecutors, such as district public prosecutors. Additionally, Article 25 of the Prosecutor's Office Act stipulates that public prosecutors have the right to give written instructions regarding an investigation when prescribed by law. Such written instructions must be taken into account into any investigation. To determine the actual degree of independence of public prosecutors in Azerbaijan, it is therefore important to look at their appointment and disciplinary system.

II. 2. Selection of candidates

In Azerbaijan, public prosecutors are not chosen on a competency merit basis. Selection criteria for being appointed as public prosecutor are broad and regulated by the Law of the Public Prosecutor's Office, which states that "[t]he citizens of Azerbaijan having higher legal education, the right to vote, the necessary professional qualifications for fulfilling the duties of public prosecutor, the inspector or the field investigator and knowledge of the national language of Azerbaijan"³⁴ are eligible for the position of public prosecutor.

It is common practice that individuals who have served with the public prosecutor's office for at least five years and aligned themselves with its policies are more likely to be selected for the position of public prosecutor. Candidates who wish to be appointed to senior positions must be over 30 years of age³⁵.

³¹ Prosecutor's office, art. 11.

³² A list of the different grades can be found in Law on Service in Bodies of Prosecutor's Office, 29 June 2001, no 167-IIQ, s IV.

³³ Prosecutor's Office Act, art. 16.

³⁴ Prosecutor's Office Act, art. 29.

³⁵ Prosecutor's Office Act, art. 29.

Taking this into account, it seems difficult for recent graduates, such as young lawyers, and those who have not already worked with the public prosecutor's office to enter the profession.

Candidates are appointed by an examination commission, which is composed of seven members. They are either employees of the prosecutor general's office or selected by the prosecutor general³⁶. The commission's decisions are binding and cannot be overturned. In this context, lawyers who practice in Azerbaijan highlight the possibility to rely on article 60 para 1 of the Constitution³⁷, which introduces the right to judicial review. However, this article is rarely used in practice.

II. 3. Training

Candidates, who have succeeded in the selection process, are required to complete training courses operated by the scientific-educational center of the public prosecutor's office. After successfully completing the vocational training, candidates have to work as trainee public prosecutors. The training period is one year. Afterwards, the trainee public prosecutor will be awarded a certificate and employed by the public prosecutor's office for an initial period of six months, with the possibility to get appointed for a permanent position at the public prosecutor's office. Trainees who are not awarded the practice certificate or who do not pass the probation period will be removed from the traineeship scheme³⁸.

According to the Group of States against Corruption (GRECO)³⁹, approximately one percent of the candidates to be employed by the public prosecutor's office is recruited by the examination commission directly from other law enforcement bodies with which they bypass the standard recruitment procedure. Despite their relatively low number, such appointments may be perceived as offering an opportunity for arbitrary decision-making and favoritism, rather than relying on clear, objective, transparent and verifiable professional qualifications, knowledge and skills. Since the system of initial recruitment has been estimated to work rather well and has proven to be effective, the introduction of the specific criteria and procedure⁴⁰ for the appointment of other law enforcement agents to the ranks of the Prosecutor's Office would further uphold its image and reputation. Consequently, GRECO recommended "that objective and transparent criteria and procedure for the appointment to the prosecutor's office of other law enforcement staff be developed and made public"⁴¹.

³⁶ Presidential Decree of Azerbaijan on the "Approval of Rules concerning the Selection Process of Candidates for the Prosecutor's Office", 19 June 2001, no 509, art. 2.

³⁷ Which ensures the rights and liberties of each citizens.

³⁸ Law on Service in Bodies of Prosecutor's Office, art. 4.

³⁹ The Group of States against Corruption (GRECO) was established in 1999 by the Council of Europe to monitor and improve its member States' compliance with the group's anti-corruption standards, by using the dynamic process of mutual evaluation and peer pressure.

⁴⁰ GRECO, Evaluation IV Report (2014), 2E, Fourth Round Evaluation Report on Azerbaijan (adopted on 10 October 2014), 30.

⁴¹ *Ibidem*.

II. 4. Nomination and appointment of prosecutors

This institutional arrangement grants particularly strong powers to the President of the Republic and his administration, who exercise considerable influence on the legislature and the judiciary, including the prosecutor's office. For instance, the President has an important role to play in senior appointments within the public prosecutor's office, either directly or indirectly. The general prosecutor is appointed by the President, subject to the endorsement by the Milli Majlis, the Azerbaijani parliament, in which the President's party holds the majority of vote⁴². Furthermore, the deputies of the public prosecutor, the chief specialized prosecutors and the chief prosecutor of the NAR are selected by the President, on a proposal of the prosecutor general. The prosecutor general can be re-appointed to his position without any restrictions⁴³.

Territorial and specialized prosecutors are appointed by the prosecutor general with the consent of the President of the Republic⁴⁴. This process generally lacks a clear and objective selection procedure and is subject to political favoritism and corruption⁴⁵. In 2014, GRECO recommended in its report to review "the Prosecutor's Office Act (...) and eliminate any undue influence and interference in the investigation of criminal cases in the exercise of statutory controls over the cavities of the prosecutor's office, and the setting up, closure and basic organizational structure of all prosecution offices to be determined by law"⁴⁶.

Interviews with local lawyers revealed that vacancies at the senior and medium level are not publicly advertised by the prosecution, and that in such cases pre-selections are made by the personnel department of the prosecutor general's office, often without the suitable candidates' knowledge. In this context, GRECO recommended in its report on Azerbaijan that to publicly advertise "all senior vacancies in the prosecutor's office (...) and access to them [should] be made subject to clear, objective and transparent criteria". Moreover, consideration should "be given to providing for suitable candidates for senior posts to be evaluated and submitted by a body composed of a majority of persons unrelated to the executive". Furthermore, GRECO suggested that the governments should establish a "prosecutorial council composed not only of prosecutors representing all levels but also of other actors like lawyers or legal academics⁴⁷. The establishment of such councils is increasingly widespread in the political systems of individual states"⁴⁸.

⁴² Constitution, art. 133 para 3.

⁴³ The limit of two terms was abolished on 20 October 2009 by amendments to the Constitution.

⁴⁴ Constitution, art. 133 para 4.

⁴⁵ GRECO, Evaluation IV Report (2014), op. cit., 3.

⁴⁶ GRECO, Evaluation IV Report (2014), op. cit., 29.

⁴⁷ GRECO, Evaluation IV Report (2014), op. cit., 31.

⁴⁸ Venice Commission, 'Report of the Venice Commission on "European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service"', <[http://www.venice.coe.int/webforms/documents/CDLAD\(2010\)040.aspx](http://www.venice.coe.int/webforms/documents/CDLAD(2010)040.aspx)> accessed 12 August 2016.

II. 5. Accountability

Generally, the UN Guidelines on the Role of Prosecutors⁴⁹ do not take a definitive stance on the issue of the formal independence of prosecutors, recognizing that different legal traditions and legal systems deal with this principle in different ways.

However, the International Association of Prosecutors Standards expressly provide that when prosecutorial discretion is permitted, such discretion should be exercised independently and be free from the political interference⁵⁰. While the possibility of instructions from non-prosecutorial authorities is envisaged, such instructions must be transparent, consistent with lawful authority and subject to guidelines in order to safeguard both the actuality and the perception of prosecutorial independence.

In Azerbaijan, the prosecutor general is accountable to the parliament and the President of the Republic: the public prosecutor informs the parliament annually of its activities, except for criminal cases under investigation, and continuously informs the President (annually and upon request) of the same, including criminal cases under investigation⁵¹.

The PACE resolution on Azerbaijan also underlines the reporting duties of the prosecutor general to the President that, in addition to the annual report, include informing the President about ongoing criminal investigations⁵². But the reporting is not public and there is no public information available about the topics discussed with the President.

II. 6. Dismissal

The prosecutor general can be removed from his/her position by the President, with the consent of the Milli Majlis. The deputies of the prosecutor's general office, the prosecutors supervising specialized prosecutor's offices and the prosecutor of the NAR are dismissed by the President of the Republic, on the recommendation of the prosecutor general.

Territorial and specialized prosecutors are dismissed by the prosecutor general, with the consent of the President⁵³. The Azerbaijani law states more precisely the grounds for these officials' dismissal.

⁴⁹ UN Guidelines on the Role of Prosecutors (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990)

<<http://euromed-justice.eu/document/un-1990-guidelines-role-prosecutors>> accessed 12 August 2016.

⁵⁰ International Association of Prosecutors, Standards set by the International Association of Prosecutors <<http://www.iap-association.org/Resources-Documentation/IAP-Standards>> accessed 12 August 2016

⁵¹ Prosecutor's Office Act, art. 43-44.

⁵² PACE, Committee on the Honoring of Obligation and Commitments by Member States of the Council of Europe, Report on 'The functioning of democratic institutions in Azerbaijan (24 June 2015).

⁵³ Constitution, art. 133 paras 3-4.

This may include poor health conditions which prevents the prosecutor from performing official duties and lasts for more than six months; gross or systematic disciplinary breaches; being appointed or elected to parliament, government, judiciary or local self-government bodies; not meeting recruitment requirements; or his/her voluntary resignation⁵⁴.

The following reasons for dismissal of a prosecutor may raise concern:

- conviction for crimes related to the performance of his/her official duties, such as withdrawal from a case due to lack of a sufficient legal basis;
- being subject to a court ruling or order to undergo medical treatment;
- not meeting the recruitment requirements established by the Law on Prosecutor's Office for candidates for the position of prosecutor or field investigator at the prosecutor's office;
- conflict of interest: undertaking activities which are incompatible with the position of public prosecutor or field investigator at the prosecutor's office or grounds for the assumption that such activities are taken⁵⁵.

These criteria are vague, meaning that the executive branch enjoys a wide margin of discretion. As there is no mechanism to monitor its decisions, allowing public prosecutors to exercise their basic formal guarantees, these measures can be used to threaten public prosecutors if they are not responsive to the instructions of superiors and government policies.

II. 7. Disciplinary responsibility of prosecutors

The Azerbaijani law provides for disciplinary actions against prosecutors who violate office discipline or grossly fail to fulfil professional obligations⁵⁶. The applicable disciplinary sanctions are: reproof; reprimand; severe reprimand; demotion in a special rank; dismissal with deprivation of a special rank; and dismissal. Disciplinary procedures are carried out by the prosecutor general and internal investigations are conducted by an investigation public prosecutor who notifies the public prosecutor concerned of the results of the investigation. Disciplinary sanctions can be imposed within one month from the date the public prosecutor concerned was found guilty⁵⁷.

⁵⁴ Prosecutor's Office Act, art. 34.

⁵⁵ Law about Service in Bodies of Prosecutor's Office, art. 29.

⁵⁶ Prosecutor's Office Act, art. 33; and art. 26-27 of the Law on the Service in Bodies of Prosecutor's Office, art. 26-27.

⁵⁷ Law on the Service in Bodies of Prosecutor's Office, art. 26-27.

According to data provided by the European Commission for the Efficiency of Justice, there were ten disciplinary proceedings opened in 2012 in Azerbaijan: nine of them concerned professional inadequacy and one the breach of ethical rules⁵⁸. Whether sanctions were imposed was not reported.

According to the interviewed Azerbaijani lawyers, disciplinary proceedings may be used in order to silence those who have critical opinions of superiors. In this context, the case of Rufat Safarov was used as an example. He was an investigator in the prosecutor's office of Zardab district and the son of Eldar Sabiroglu, a previous spokesperson of the Ministry of Defense. Rufat Safarov wrote an article in a newspaper claiming that he faced irregularities in his office, particularly that he was passed over for promotion. As a result, Rufat Safarov was dismissed from the prosecutor's office after disciplinary proceedings and criminal charges were filed against him. He then was arrested and sentenced to house arrest (instead of prison detention)⁵⁹.

Ethical principles and rules of conduct as enshrined in the Prosecutorial Code of Ethical Behavior are generally not subject to examination in disciplinary proceedings⁶⁰. At the same time, under this Code, the highest evaluating authority, the Supreme Attestation Commission, according to the GRECO report, "has the right to consider violations of ethical rules and to submit motions for initiating disciplinary proceedings against prosecutors by the competent bodies"⁶¹. GRECO argues that, "since under the Civil Service Act performance appraisal constitutes one of the key principles of the civil service, to which all prosecutors belong, there is no reason why certain categories of prosecutors, such as specialized or senior prosecutors, should be exempted from it [the Prosecutorial Code of Ethical Behavior]"⁶². GRECO then recommended that, first, the compliance with the Prosecutorial Code of Ethical Behavior should be assessed in the periodic evaluation⁶³ of public prosecutors' performance, and, second, that all categories of prosecutors be made subject to periodic performance evaluation. Furthermore, GRECO pointed out that public prosecutors are likely be subject to "'encouragement measures' for exceptional performance, long and flawless career and other services"⁶⁴ and that a list of such measures may "include an acknowledgement, a pecuniary bonus, a valuable gift, an honor certificate, a badge or breastplate"⁶⁵ and promotion.

⁵⁸ CEPEJ, 'Report of the CEPEJ 2014', 351

<http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf> accessed 12 August 2016.

⁵⁹ Information about this case is available at:

<<https://www.irfs.org/news-feed/house-arrest-of-former-investigator-rufat-safarov-extended-for-three-months/>> and <<http://hrf.report/initiated-a-criminal-case-against-the-prosecutor-as-he-criticized-the-government/>> accessed 12 August 2016.

⁶⁰ Act on rules for the ethical conduct of civil servants (2007); Prosecutorial Code of Ethical Behavior.

⁶¹ GRECO, Evaluation IV Report (2014), op. cit., 31.

⁶² GRECO, Evaluation IV Report (2014), op. cit., 31.

⁶³ GRECO, Evaluation IV Report (2014), op. cit., 31, 41.

⁶⁴ Prosecutor's Office Act, art. 32; Act on Service in the Prosecutor's Office (2001), art. 23.

⁶⁵ GRECO, Evaluation IV Report (2014), op. cit., 32.

These measures are applied by the prosecutor general and their application dependent on the “good will” of the executive branch as there are no internal guidelines or requirements prescribing which of those measures should be applied in which case. GRECO therefore concludes that the application of “encouragement measures” should be based on clear, objective and transparent criteria to guarantee a proper functioning public prosecution service in Azerbaijan⁶⁶.

Furthermore, GRECO raised concern in its report that the knowledge and competences of judges in the field of ethical standards are limited. The group recommended that a system of confidential counselling on integrity and ethical matters should be established within the judiciary, and that ongoing training should be provided to judges on ethical conduct, conflicts of interest and asset disclosure⁶⁷.

II. 8. Conclusions

In Azerbaijan, the public prosecution service is part of the judicial branch. Due to the strict hierarchical relations within the service, lower-rank public prosecutors are subordinated to their superiors, and are to receive instruction from them, such as changing, abrogating, recalling and substituting their decisions and acts. Although there is no law prescribing instructions, they are respected in practice, which leaves little space for independent decision-making of lower-rank officials.

As a rule, the public prosecution service is reserved for persons having at least five years’ experience in the public prosecutor’s office, which is a precondition to be appointed as a prosecutor. Therefore, it is less likely for young lawyers to enter the profession. It is also important to note that, according to GRECO, among the candidates employed by the public prosecutor’s office, approximately one percent is recruited by the examination commission directly from other law enforcement bodies and thus bypasses the standard recruitment procedure.

Despite their relatively low number, such appointments, may be perceived as offering an opportunity for arbitrary decision-making and favoritism, rather than relying on clear, objective, transparent and verifiable professional qualifications, knowledge and skills.

The prosecutor general can be re-appointed to his position without any restrictions, a rule that was introduced in 2009. Vacant positions at the senior and medium level are not publicly advertised and in such cases pre-selections are made by the personnel department of the general prosecutor’s office, often without the suitable candidates’ knowledge. There are no clear, objective and transparent criteria for the selection of those candidates.

⁶⁶ GRECO, Evaluation IV Report (2014), op. cit., 32.

⁶⁷ GRECO, Evaluation IV Report (2014), op. cit., 22.

Furthermore, the applicable criteria for dismissal of public prosecutors as stipulated in the Azerbaijani law appear to be too broad, providing a wide margin of appreciation that may allow the executive branch to use them against public prosecutors who do not align with its policies (such as ‘undertaking activities which are not compatible to the position of prosecutor’). It is therefore likely that disciplinary proceedings may be used against public prosecutors to silence critical voices within the prosecution service.

The prosecutor general is accountable to the parliament and the President of the Republic. The public prosecutor informs the parliament annually of the Service’s activities, except for criminal cases under investigation, and systematically informs the President (annually and upon request) of the same, including criminal cases under investigation. **However, the reporting is not public and there is no public information available about the topics discussed with the President.**

III. Organization of the judiciary

The Azerbaijani Constitution emphasizes the balance of powers and the independence of each branch within their scope of authority⁶⁸. According to Art. 127 of the Constitution, judges are independent, bound only by the constitution and laws, and cannot be removed during the term of office. Justices must be impartial, fair, act based on facts and according to the law, and guarantee the equality before the law. The President shall ensure that the independence of the judiciary is respected in practice⁶⁹.

There is a variety of factors that can further guarantee the independence of judges, such as secure tenure, insulating them from (internal and external) pressure, budgetary autonomy of the judicial branch and holding judges accountable for their actions⁷⁰. To prevent any conflict of interest, judges are not allowed to be engaged in any entrepreneurial, commercial or other paid employment, except for research, pedagogical and creative work. Furthermore, they are prohibited from engaging in political activities and being a member of political parties, accepting payments other than their official salary or remuneration for research, pedagogical or creative work⁷¹. Therefore, candidates appointed to the judicial positions are required to cancel their membership of political parties and political organizations before taking and signing an oath of office⁷².

⁶⁸ Constitution, art. 7 para 2.

⁶⁹ Cf. PACE, Committee on the Honoring of Obligation and Commitments by Member States of the Council of Europe, Report on ‘The functioning of democratic institutions in Azerbaijan (24 June 2015).

⁷⁰ Law on Courts and Judges, art. 100.

⁷¹ Constitution, art. 126 para 2; Law on Courts and Judges, art. 104.

⁷² Law on Courts and Judge, art. 105.

Overall, various formal rules heavily undermine the independence of judges in practice as they increase the role played by the executive branch in the appointment process of judges and require a lengthy probation period for judges.

III.1. Selection of candidates

Candidates to the position of judge must be citizens of Azerbaijan, at least 30 years of age, having the right to vote, a university degree and at least five years' of working experience in law⁷³. The Judicial Legal Council (JLC) oversees the appointments process of judges and is also responsible for their promotion and disciplinary proceedings⁷⁴. It appoints the members of the Judges Selection Committee (JSC)⁷⁵ who serve for a five-year term, select the candidates for the judicial positions and design the legal training curriculum⁷⁶. The JSC is not a purely judicial entity and consists of two Supreme Court judges, three appeal court judges, one NAR Supreme Court judge and one representative of the Ministry of Justice, the General Prosecutor's Office, the JLC staff, the bar association and one university teacher.

The selection process itself should be transparent⁷⁷. Applicants are required to pass a written exam, followed by an oral exam organized by the JLC. The results of these exams are evaluated by the JSC⁷⁸. In practice, the examination process of candidates to the position of trainee judges is confidential and only little information is available for the public. Therefore, Azerbaijani lawyers, who were interviewed for this report, call to open up the initial recruitment process, especially to publish the decisions made by the JLC⁷⁹.

Other rules, however, apply to persons prominent in the legal field, with 20 years' experience as legal practitioners and 'high moral qualities'. They can be subject to a special recruitment procedure and appointed directly to senior positions, on a proposal of the JLC⁸⁰.

⁷³ Constitution, art. 126; Law on Courts and Judges, art. 93.

⁷⁴ Law on Courts and Judges, art. 93 para 1.

⁷⁵ The JSC was established by the Judges Selection Committee Charter, adopted by the JLCon 11 March 2005.

⁷⁶ Law on Courts and Judges, art. 93 para 2; Judges Selection Committee Charter, art. 3 para 5.

⁷⁷ Judges Selection Committee Charter, art. 1.

⁷⁸ Law on Courts and Judges, art. 93 para 3. If a member of the JSC has close ties or another dependent relationship with applicants, the member concerned is not allowed to conduct the exams and the interview with the candidate. Applicants shall raise an objection to the JSC at least one day before examination take place. The JSC shall consider objections at its sessions (art. 2.4. of the Rules of Selection of Non-Judicial Candidates to Vacant Judicial Posts).

⁷⁹ Eastern Partnership Civil Society Forum, 'Judicial Independence in the Eastern partnership Countries (Armenia, Azerbaijan, Belarus, Georgia)', 5 <http://eap-csf.eu/assets/files/publications/Judicial_Independence_in_the_EaP-Countries.pdf> accessed 12 August 2016.

⁸⁰ Law on Courts and Judges, art. 93 para 4.

III. 2. Training

Applicants, who have succeeded in the (entry) exam, must undergo a one-year training program organized by the legal training center of the Ministry of Justice. They receive a salary determined by the JLC. At the end of the training, the trainees' performance is evaluated by the legal training center and the JSC. Shortlisted candidates, who have successfully sat tests and an interview, are allowed to attend the final interview held by the JLC. In the exams, candidates have to demonstrate their legal skills, such as drafting judgments⁸¹. Once the test results have been released to the JLC, successful trainees are appointed to vacant positions by the President of the Republic, on the proposal of the JLC. In this context, the JLC shall consider the specialization of each candidate, the assessment of the candidate by the JSC and test results⁸². The names of successful trainees shall be made public⁸³. Applicants who have completed the training successfully but were not appointed as judges will maybe offered to serve in other positions within the judiciary or to the public prosecutor's office.

This selection procedure, in which the executive branch can exert significant influence on the appointment of judges, clearly contradicts the Committee of Ministers' Recommendation no R (94)12 stating that "the authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and the authority decides itself on its procedural rules"⁸⁴. Furthermore, it notes that "[a]ll decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merits, having regard to qualifications, integrity, ability and efficiency". In 2012, the Council of Europe's Human Rights Directorate also voiced concerns, noting that it was 'fully dependent' on the Ministry of Justice and that Ministry's influence on the Academy was 'practically unlimited', contrary to the requirements of the European Charter on the Statute of Judges⁸⁵. The European Charter on the Statute of Judges notes that the legal training of judges must be overseen and implemented by an authority which 'independent of the executive and legislative powers'⁸⁶.

The Council of Europe also expressed concern at the potentially subjective nature of the oral exam and final interview, and recommended that the criteria for evaluation 'should be defined with special care' and 'based on objective criteria'⁸⁷.

⁸¹ Rules of Selection of Non-Judicial Candidates to vacant judicial posts, art. 4 para 5.

⁸² Rules of Selection of Non-Judicial Candidates to Vacant Judicial Posts, art. 2 para 9. These rules were approved by the JLC on 11 March 2005.

⁸³ Rules of Selection of Non-Judicial Candidates to vacant judicial posts, art. 4 para 2.

⁸⁴ Council of Europe Committee of Ministers on the independence, efficiency and role of judges.

⁸⁵ Council of Europe, Directorate of Human Rights and Rule of Law, Training of Judges (May 2012), 14, 28–29.

⁸⁶ European Charter on the Statute of Judges 1998, Principles 1.3 and 2.3.

⁸⁷ Council of Europe, Directorate of Human Rights and Rule of Law, Training of Judges (May 2012), 14, 44.

Additionally, the Organization for Economic Co-operation and Development (OECD) underlines in its report on Azerbaijan that the prevention of corruption is not discussed in-depth in the training curriculum. It notes that 'In the general training offered to the judges as well as in the examination of candidates for a judicial position, the criminal legislation on corruption is, sometimes, one of the topics, among others.

Judges are also, occasionally, consulted with regard to draft laws, including to those on corruption issues. However, no training or guidance on anticorruption standards, on prevention and assessment of the corruption risks within the judiciary itself was reported. Topics like conflicts of interests, incompatibilities, requirement of financial disclosure, reactions to gifts, reporting corruption and whistle-blowing protection, etc. do not seem to be part of the regular training curriculum⁸⁸.

III. 3. Nomination and appointment of judges

Judges of the Constitutional Court, the Supreme Court and the appellate courts are nominated by the President of the Republic and appointed by parliament⁸⁹, while the presidents of the Supreme Court, the NAR Supreme Court as well as the appellate and serious crime courts are appointed directly by the President⁹⁰ of the Republic. All other judges, including court presidents, their deputies and presidents of court collegiums, are appointed by the President, on the proposal of the JLC. Court presidents serve for a five-year term which is renewable once⁹¹. International standards require that the appointment of judges must be carried out 'according to objective and transparent criteria'⁹², with safeguards against the selection of judges 'for improper motives'⁹³.

GRECO highlighted that it is for the JLC to play an increasing important role in the appointment of all categories of judges and court presidents⁹⁴. In this context, Giacomo Oberto, the Deputy Secretary General of the International Association of Judges, mentioned explicitly that for the sake of independence of judiciary, the executive or legislative power should have no influence in the selection process of judges (and public prosecutors)⁹⁵.

⁸⁸ OECD, 'Third Round of Monitoring. Azerbaijan' (2013) 84 <<http://www.oecd.org/corruption/acn/AZERBAIJANThirdRoundMonitoringReportENG.pdf>> accessed 12 August 2016.

⁸⁹ Constitution, art. 130 para 2, 131 para 2, 132 para 2.

⁹⁰ Constitution, art. 109 para 32.

⁹¹ Constitution, art. 109 para 32.

⁹² The 1999 Universal Charter of the Judge, art. 9.

⁹³ UN Basic Principles on the Independence of the Judiciary, principle 10; Council of Europe, Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, Recommendation no R (94) 12, principle I.2.

⁹⁴ GRECO, Evaluation IV Report (2014), op. cit., 20.

⁹⁵ W Sadurski and others, Spreading Democracy and Rule of Law: The Impact of EU Enlargement for the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders, 316-317.

III. 4. Probation period

In 2015, the administration of the President introduced a new law according to which judges, who are appointed for the first time, serve only for an initial period of three years instead of the previous five years⁹⁶. At the end of term, their performance is evaluated, with the possibility of being re-appointed. In that case, their mandate would be prolonged until the age of retirement, which is 68 years for judges of the Supreme Court and 66 years for all other judges⁹⁷.

The ECtHR questioned such probation periods⁹⁸ as did the Venice Commission. Probation can undermine the independence of judges, by limiting a judge's ability to engage in judicial activism, and the Venice Commission recommended that ordinary judges should be appointed permanently until retirement⁹⁹.

Where probation periods still exist, they should be substantially reduced and permanent appointments should be increased, which should follow objective, fair, clear, pre-established and accessible selection criteria¹⁰⁰.

III. 5. Organization of the judiciary

Azerbaijan has a three-stage judicial system: courts of first instance, appellate courts and courts of cassation.

Judicial legal council

According to the Council of Europe, the independence of judges should be safeguarded by an impartial, independent and purely judicial entity, the judicial council.

⁹⁶ Based on an amendment to the Law on Courts and Judges which was adopted on 11 February 2015.

⁹⁷ PACE, Committee on the Honoring of Obligation and Commitments by Member States of the Council of Europe, The functioning of democratic institutions in Azerbaijan [24 June 2015].

⁹⁸ *Henryk Urban and Ryszard Urban v Poland* App no 23614/08 (ECHR, 30 November 2010). In that case, the ECtHR recalled that 'in determining whether a body can be considered as "independent" – notably of the executive and of the parties to the case – regard must be had, inter alia, to the manner of appointment of its members and the duration of their term of office, the existence of guarantees against outside pressures and the question whether the body presents an appearance of independence.' Cf. *Campbell and Fell v the United Kingdom* App no 80 (ECHR, 28 June 1984); *Findlay v the United Kingdom*, App no 22107/93 (ECHR, 25 February 1997); *Incal v. Turkey*, App no 22678/93 [9 June 1998]; *Brudnicka and Others v Poland* App no 54723/00 [3 March 2005]; *Luka v. Romania* App no 34197/02 (ECHR, 21 July 2009).

⁹⁹ Venice Commission, Report on the independence of the judicial system part I: the independence of judges (adopted by the at its 82nd Plenary Session, 12 and 13 March 2010) <[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e)> accessed 12 August 2016.

¹⁰⁰ Cf. Venice Commission, Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution of Georgia (adopted on 15-16 October 2010) paras 85-91.

In Azerbaijan, the JLC is a permanent, constitutional and self-governing body, which was set up in 2005, overseeing the appointment and promotion process of judges¹⁰¹. Its members are selected by the Milli Majlis¹⁰² and shall be bound only by the constitution and laws.

Its members are selected by the Milli Majlis and shall be bound only by the Constitution and laws. The selection process of its members is, however, mainly regulated by statutory guarantees (namely the Law on the Judicial Legal Council), which can be easily overturned. Apart from that, there is only one provision in the constitution that deals with the composition of the JLC¹⁰³.

The JLC consists of 15 members, including nine judges (the president of the Supreme Court; one judge of the Constitutional Court; two judges of the Supreme Court who are appointed by the Supreme Court and nominated by the general assembly of judges; two judges of appellate courts appointed by the Supreme Court and nominated by the general assembly of judges; one of the NAR Supreme Court appointed by the NAR Supreme Court and nominated by the general assembly of judges; two judges of magistrates' courts appointed by the Minister of Justice and nominated by the general assembly of judges); one member appointed by the President of the Republic; one member appointed by the Milli Majlis; the Minister of Justice and another member appointed by him or her; one lawyer appointed by the board of the bar; and one member appointed by the prosecutor's general office¹⁰⁴.

Ideally, the judicial council should be an impartial, independent and purely judicial entity and its members should be selected by its peers¹⁰⁵. In particular, the European Charter on the Status of Judges of the Council of Europe emphasizes that it is vital that the body, which is responsible for the selection of candidates to the position of judge, their promotion and dismissal, must be independent¹⁰⁶. By contrast, the JLC gives meaningful powers to the executive branch: the JLC has been headed by the Minister of Justice since its creation in 2005, and the majority of its members are chosen by the government and the parliament, which appoints only one member but is also dominated by the President's party. Not surprisingly, there is no information available for the public, when and how members of the JLC are appointed¹⁰⁷.

¹⁰¹ Law on Courts and Judges, art. 93 para 1; Law on Judicial Legal Council, art. 1, 4 para 1.

¹⁰² Constitution, art. 95.

¹⁰³ Law on Judicial Legal Council, art. 9 para 1.

¹⁰⁴ Law on Judicial Legal Council, art. 6.

¹⁰⁵ Consultative Council of European Judges (CCEJ), Opinion no 10 of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society (adopted at the 8th meeting, Strasbourg, 21-23 November 2007) 7.

¹⁰⁶ Eastern Partnership Civil Society Forum, 'Judicial Independence in the Eastern partnership Countries (Armenia, Azerbaijan, Belarus, Georgia)' 5 <http://eap-csf.eu/assets/files/publications/Judicial_Independence_in_the_EaP-Countries.pdf> accessed 12 August 2016.

¹⁰⁷ Ibidem.

This raises concern whether the JLC can be considered as an independent entity, as a guarantor for the values and fundamental principles of judges, and is capable to carry out its tasks in an objective, fair and unbiased manner. In this context, the Consultative Council of European Judges (CCJE) states that a judicial council can be either composed solely of judges or have a mixed composition. When there is a mixed composition, such as in Azerbaijan, the CCJE considers that, in order to prevent any manipulation or undue pressure, a substantial majority of the members of the judicial council should be elected by its peers¹⁰⁸. Furthermore, it recommends that a judicial council should reflect the entire judiciary, including judges of lower and higher courts, in its composition¹⁰⁹.

Thus, GRECO recommended in its report on Azerbaijan that the role of the judiciary within the JLC should be reinforced, notably by **providing for not less than half of its members to be composed of judges who are directly elected or appointed by their peers and by ensuring that the president of the JLC is elected from among the JLC members who are judges**¹¹⁰.

Similarly, the OSCE's Kiev Recommendations on Judicial Independence **call for judicial members who shall be elected to the council by its peers, and that, apart from 'a substantial number of judicial members elected by judges', the judicial council should also consist of law professors and preferably one member of the bar**. But prosecutors should be excluded from participating in the judicial council 'where prosecutors do not belong to the same judicial corps as the judges' as should be 'other representatives of the law enforcement agencies'. The work of the judicial council should not be dominated by representatives of the executive and legislative branch'. Therefore, neither the State President nor the Minister of Justice should preside over the judicial council¹¹¹.

Furthermore, a report on "Enhancing Judicial Reform in the Eastern Partnership Countries" by a joint project of the EU and the Council of Europe¹¹² points out that the general assembly of judges always should recommend at least two candidates for one position at the judicial council and that the final choice on which candidate should become a member should be made by various bodies, one of which should be a (non-judicial) outside authority.

It was concluded that the judicial appointment system "could be rendered much more transparent if the general assembly of judges were vested with the powers of election or appointment instead of being an advisory body empowered merely to propose candidates for a final determination to be made by different institutions residing in other branches of State power".

¹⁰⁸ Opinion no. 10 (2007), op. cit., 5

¹⁰⁹ Ibidem.

¹¹⁰ GRECO, Evaluation IV Report (2014), op. cit., 18.

¹¹¹ OSCE, Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia (2010) para 7.

¹¹² EU and the Council of Europe, Eastern Partnership, 'Enhancing Judicial Reform in the Eastern Partnership Countries. Working Group report on "Efficient Judicial Systems"' (March 2013) <http://www.coe.int/t/DGHL/cooperation/cepej/cooperation/Eastern_partnership/FINAL%20efficient%20judicial%20systems According to Article 130 of the Constitution, %20EN%20March%202013.pdf> accessed on 12 August 2016.

Constitutional Court and the Supreme Court

The Constitutional Court is composed of nine judges who are appointed by the Milli Majlis on recommendation of the President¹¹³. The president (and his/her deputy) is appointed by the President of the Republic¹¹⁴, without consulting a judicial body, which is generally a widely accepted practice worldwide. But since the President's party also holds a majority of vote in the Milli Majlis, this appointment practice may undermine the independence of judges serving at the Constitutional Court¹¹⁵. Nevertheless, this selection process does not automatically mean that judges are also loyal to the ruling party in the long-run. For instance, if judges are appointed for life, this may make them less reliable on the executive branch over time.

The Constitutional Court of Azerbaijan takes cases referred by the President, Milli Majlis, Cabinet of Ministers, Supreme Court, public procurator's office and the parliament of NAR, on the following matters:

- review of laws of Azerbaijan, decrees and orders of the President, decrees of Milli Majlis, decrees and orders of Cabinet of Ministers, normative-legal acts of central bodies of the executive branch power and their compliance with the constitution of Azerbaijan;
- review of decisions of the Supreme Court of Azerbaijan concerning the constitution and laws;
- review of acts of municipalities, laws of the President, decrees of Cabinet of Ministers (in NAR: this includes the constitution and laws of NAR and decrees of Cabinet of Ministers of NAR);
- review of interstate agreements of Azerbaijan, which have not come into force yet, and intergovernmental agreements concerning the constitution and national laws;
- review of the constitution and laws of NAR, decrees of parliament of NAR, decrees of Cabinet of Ministers of NAR concerning the constitution of the Republic of Azerbaijan; review of laws of NAR, decrees of Cabinet of Ministers of NAR and their compliance with laws of Azerbaijan; review of decrees of Cabinet of Ministers of NARs with their compliance with decrees of the President and decrees of Cabinet of Ministers of the Republic of Azerbaijan;
- dispute settlements with regard of the separation of powers.

¹¹³ Law on the Constitutional Court, art. 20.

¹¹⁴ Law on the Constitutional Court, art. 20 paras 1, 2.

¹¹⁵ Venice Commission, Opinion on the Draft Law on the Constitutional Court of Azerbaijan no CDL-AD(2002)005 (2002), 8.

According to the Venice Commission, particular attention should be paid to the workload of the Constitutional Court, which can have difficulties in adjudicating all the pending cases. Such a risk exists when the constitutional court, such as in Azerbaijan, not only deals with issues concerning the constitutional compatibility of legislation but is also required to ensure compliance of administrative acts with the Constitution, a task with which only administrative tribunals deal in other continental-European legal systems¹¹⁶.

As for the Supreme Court, it is the highest court dealing with civil, criminal, administrative and other fields of law¹¹⁷. The court consists of a president and a deputy president, as well as at least 24 judges presiding the various chambers of the Supreme Court. Its judges are appointed by the Milli Majlis, on the recommendation of the President¹¹⁸. While it sits primarily as a cassation court, the Supreme Court has the power to quash decision of appellate courts and substitute its own decision (although this is rarely done in practice).

Immunity and dismissal of judges

Generally, judges enjoy immunity, which includes his/her office and private premises, and cannot be replaced during their term of office¹¹⁹. Therefore, they cannot be detained or arrested, subject to personal search, examination and criminal prosecution¹²⁰ and can only be dismissed if they commit a criminal offence. In that case, the dismissal has to be taken by the Milli Majlis, following a motion by the President. A majority of 83 votes of members of parliament is needed to dismiss judges of the Supreme Court and Constitutional Court, while a majority of 63 is required for the recusal of justices of other courts¹²¹.

Disciplinary procedures are initiated and carried out by the JLC. Complaints against judges can be submitted to the prosecutor general by members of the public, the President of the Republic, the Minister of Justice and superior judges¹²². In case there are sufficient grounds to file criminal charges against a judge, the prosecutor general is required to send a motion to the JLC for consideration. In cases of flagrante delicto, the prosecutor general has to send a motion within 24 hours. In “other cases”, for instance, where special investigative techniques are needed, a motion should be considered within ten days. This period is regarded as too lengthy. The international community therefore called for substantially reducing this period, stating that to judges should apply the same criminal code as other citizens¹²³.

¹¹⁶ Venice Commission, Opinion on the draft law on the Constitutional Court of Azerbaijan no CDL-INF(1996)010 (1996), 3.

¹¹⁷ Law on the Constitutional Court, art. 20 paras 1, 2.

¹¹⁸ Constitution, art. 131 para 3.

¹¹⁹ Constitution, art. 128.

¹²⁰ Constitution, art. 128; the Law on Courts and Judges, art. 101.

¹²¹ Constitution, art. 127.

¹²² Law of Courts and Judges, ch 20.

¹²³ GRECO, Evaluation IV Report (2014), op. cit., 26.

Finally, the decision made by the JLC, whether a criminal prosecution should take place, is to send to the prosecutor general. Only when the JLC grants permission, which is also criticized by civil society organizations as it prevents public prosecutors from further investigating the case¹²⁴, the criminal prosecution can be pursued in accordance with the Criminal Procedure Code. In that case, the mandate of the judge is suspended but he/she will continue to receive payment. If a case against a judge is dropped, his/her authority will be restored¹²⁵. Additionally, the parliament can remove judges from the bench for various reasons, on the proposal of the President¹²⁶.

Remuneration of judges

Generally, budgetary autonomy of the judiciary plays an important role in how justices respond to (internal and external) pressure. In Azerbaijan, salaries for judges are financed from the state budget and are fixed¹²⁷. The president of the Supreme Court receives a monthly salary of 2,070 Manats (approx. 1,960 EUR); the monthly salary of the presidents of the NAR Supreme Court and appellate courts is 1,570; court presidents receive 1,372 EUR, deputy presidents 1,060 EUR and all other judges 950 EUR. For every five years in office or holding a research degree, justices receive an additional salary increment of 15 percent of their monthly salary, on condition that the surplus does not exceed 45 percent in total¹²⁸. In addition, the remuneration system provides “extra encouragements” for excellent performance or “substantial contribution to improving justice as a result of their activities, which are either valuable gifts or honorary titles (such as diplomas and badges).

According to Transparency International, the public conceives the Azerbaijani judiciary as corrupt and, in some cases, extremely corrupt. In this context, Freedom House condemns the low salaries of Azerbaijan’s judiciary “which feed into widespread corruption once judges are employed”¹²⁹.

Disciplinary liability

The law concerning disciplinary proceedings against judges is vague, leaving a wide margin of appreciation. According to the Council of Europe, appointed judges may not be removed from the office without “good reason”, which should be defined in precise terms by the law, until they have reached the retirement age¹³⁰.

¹²⁴ Transparency International, ‘Report 2014’ (2014), <<http://transparency.az/alac/files/JUDICIARY.pdf>> accessed 12 August 2016.

¹²⁵ Law of Courts and Judges, ch 20.

¹²⁶ Constitution, art. 95 para 13.

¹²⁷ Law on Courts and Judges, art. 106

¹²⁸ Law on Courts and Judges, art. 106, 110.

¹²⁹ Freedom House, ‘Nations in Transit Report. Country Profiles: Azerbaijan’ (2014) <<https://freedomhouse.org/report/nationstransit/2014/azerbaijan#.VBa5Glcud3s>> accessed 12 August 2016.

¹³⁰ Council of Europe, Committee of Ministers on the independence, efficiency and role of judges, 13.

According to the Azerbaijani law, any person and entity can launch a complaint against a judge on the following grounds:

- gross or multiple infringements of the law while reviewing a case;
- breach of judicial ethics;
- gross disciplinary violations;
- failure to comply with asset disclosure rules (stipulated in art. 5 para 5 of the Fight against Corruption Law);
- commission of corruption-related offences (according to art. 9 of the Fight against Corruption Law);
- commission of acts damaging the reputation and good name of the judge¹³¹.

Only with the permission of the JLC, which is in charge of initiating and conducting the disciplinary process, a judges may face disciplinary sanctions, which include:

- reprimand;
- reproof;
- demotion;
- transfer to a different judicial position;
- dismissal.

A judge against whom a disciplinary proceeding is being conducted is allowed to exercise basic formal rights which includes inspecting files and receiving necessary information (such as the time and venue of the disciplinary hearing), his/her representation by a judge or lawyer of his/her choice, attending the hearing personally and lodge a motion, receiving a copy of the decision made by the court and the right to appeal against it¹³².

The decision made by the JLC should be objectively substantiated by facts, significance and gravity of the offence, and the consequences of actions committed by the judge¹³³. However, it is not entirely clear under the current law under which requirements a dismissal should be considered. The law on Courts and Judges only vaguely refers to possibility of dismissal¹³⁴. Nevertheless, the disciplinary proceeding should be dropped if there are no sufficient reasons or grounds to continue it¹³⁵.

The Monitoring Report of the OECD on Azerbaijan, however, claims that not the possible misuse of disciplinary proceedings is a problem but the lack of using this instrument at all. “It appears that little progress was made by Azerbaijan in regards to abolishing or limiting immunity of judges against prosecution. The law regarding immunity for judges remains to

¹³¹ Law on Courts and Judges, art. 111 para 1.

¹³² Law on Judicial Legal Council, art. 20.

¹³³ Law on Judicial Legal Council, art. 20, 21 para 7.

¹³⁴ Law on Courts and Judges, art. 101.

¹³⁵ Law on Courts and Judges, art. 112.

be broad and needs to be amended to balance the protection of judges against retaliation or pressure, especially from political sources, with the need to be able to carry out secret investigations prior to lifting of immunity (...). According to the JLC representative met at the on-site visit, the JLC ruled on 15 disciplinary cases. Different types of infringements were addressed through these cases, such as delays in considering cases. In some cases, judges have been dismissed following a disciplinary sanction. The example of a judge that has been dismissed for being involved in a commercial business run by one of his family members was given to the monitoring team. However, with the exception of this case, no other disciplinary cases in relation to a corrupt behavior were made available to the evaluation team during the on-site visit. Not even the case mentioned above is perceived by the judges as having a corrupt nature, although rules on incompatibilities belong to the set of anticorruption standards”¹³⁶.

Moreover, experts underline that the legislature should clarify the procedure and procedural rights in cases of termination of office not directly resulting from disciplinary proceedings¹³⁷.

Terminating judicial appointments

Judges can be removed from the bench on the following grounds:

- resignation in written;
- dismissal;
- physical incapacity established by court;
- death;
- death or disappearance established by court;
- failure to meet necessary qualifications for the position of judge;
- activities incompatible with position;
- renouncement of citizenship, acquisition of citizenship or taking up of obligations in respect of a foreign state;
- inability to perform official duties due to six months of illness established by a special medical commission under the JLC;
- disciplinary offences on two occasions in any calendar year ;
- multiple gross violations of law while adjudicating a case¹³⁸.

Aside from the fact that the provision seems to be extremely vague (for example, what is a “gross” violation, how might we define “multiple”, and must these “multiple” violations be made during a single case as the wording indicates), one also has to read this provision in the context of art. 111-1 of the Law on Courts and Judges.

¹³⁶ OECD, ‘Third Round of Monitoring. Azerbaijan’ (2013), 82, 85 <<http://www.oecd.org/corruption/acn/AZERBAIJAN-ThirdRoundMonitoringReportENG.pdf>> accessed 12 August 2016.

¹³⁷ Eastern Partnership. Enhancing Judicial Reform in the Eastern Partnership Countries. Working Group on Independent Judicial Systems. Directorate General of Human Rights and Rule of Law of the Council of Europe, March 2013, 63, available at: http://www.coe.int/t/dghl/cooperation/capacitybuilding/source/judic_reform/ENG%20March%20Report%20Independant%20Judicial%20Systems.pdf.

¹³⁸ Law on Courts and Judges, art. 113.

There, the legislation provides that one ground for disciplinary liability is “[e]ither a gross infringement or multiple infringements of the requirements of legislation in the course of considering cases”.

The question of whether both of these provisions apply to multiple infringements in the course of a single case is of pivotal importance, as art. 112 sets out the sanctions that apply in the circumstances set out in article 111-1. Those sanctions do not include termination of a judge’s powers, and only a severe reprimand or transfer to a different judicial post. If both provisions cover the same case, the law contains an inconsistency which should be eradicated¹³⁹.

According to Council of Europe expert report, **the legislature should clarify the procedure and procedural rights in cases of termination of office not directly resulting from disciplinary proceedings. Moreover, the termination of a judge’s powers for health reasons should be reconsidered and only be allowed in the event of a negative prognosis with regard to the judge’s future working capacity, that is, in cases of indefinite inability to work**¹⁴⁰.

Case management

The case management is regulated by Criminal Procedure Code, the Court Chancellery Instructions and internal rules of lower and higher courts¹⁴¹. According to these regulations, cases are randomly assigned to justices based on a coding of their first and last names, and hearing type, with due regard to the principle of equal distribution of work. Cases are distributed in a sequenced way to judges in rounds. Court presidents and collegial boards are entitled to participate in less rounds, depending on their workload. There are some exceptions from this rule, such as sickness or annual leave of the judge. After the distribution of case files, tables of distribution are drawn and signed by the competent officer of the chancellery. These tables are supervised by the court presidents.

According to the Recommendation of the Committee of Ministers¹⁴² the distribution of cases should be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system. Although a mechanism for the electronic distribution of cases exists within the Azerbaijani judiciary, this is still done manually.

Examples of electronic distribution of cases were not shared with the monitoring team. The case distribution is reviewed and discussed at the end of each month. The courts presidents are responsible for the proper functioning of the case allocation system and its monthly revision.

¹³⁹ Eastern Partnership. Enhancing Judicial ... op. cit., 64.

¹⁴⁰ Ibidem.

¹⁴¹ The Court Chancellery Instructions were developed by an ad hoc group and endorsed by the President of the Supreme Court, the Minister of Justice and the collegial board. OECD, ‘Anti-corruption network for Eastern Europe and Central Asia: anti-corruption action plan. Azerbaijan Monitoring Report’ (September 2013) <<http://www.oecd.org/corruption/acn/AZERBAIJANThirdRoundMonitoringReportENG.pdf>> accessed 12 August 2016.

¹⁴² Council of Europe, Committee of Ministers on the independence, efficiency and role of judges.

This mechanism for assignment of case files may lead to overload if judges randomly receive more complex cases. **Furthermore, the distribution of cases by court presidents, which are appointed by the President of the Republic, may create a system in which cases are assigned to judges on the basis of their political viewpoints¹⁴³.**

Conclusions

The CCJE and others highlight the crucial role of an independent judiciary in upholding the rule of law, which should therefore be in charge of appointing and promoting judge, preferably by a judicial council¹⁴⁴.

The International Bar Association (IBA) concludes that low performance of the Azerbaijani judiciary may result from two factors. First, the hangover of the former Soviet system, in which judges struggle to uphold their independence against the powerful influence of the government and where corruption is widespread within the judiciary and other branches. Second, constitutional guarantees, such the separation of powers, in particular judicial independence, are not respected in practice. For instance, the Minister of Justice exerts significant influence on the JLC¹⁴⁵.

Since 2005, the self-governance functions of the judiciary have been implemented by the JLC, a body responsible for ensuring the organization of the judicial system and the independence of the judges. The JLC appoints and promotes judges, evaluates their performance and administers disciplinary proceedings. It consists of 15 members and is heavily infiltrated by the executive branch. This raises concern if the JLC can fulfill its tasks in an objective, fair and unbiased manner. The Minister of Justice, for example, presides the JLC, and the appointment process of its members is kept secret.

After completing the compulsory legal training, judges are appointed by the President of the Republic, on the recommendation of the JLC. This requires success in entry and final exams, which are organized by the Ministry of Justice.

The initial term of office for judges, who are appointed for the first time, is three years. Once the probation period has come to an end, judges, depending on their performance which is assessed by the JLC, may be reappointed and remain in office until they have reached the age of retirement.

¹⁴³ Ibidem.

¹⁴⁴ CCEJ, Opinion no. 10 (2007) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on the Council for the Judiciary at the service of society (adopted at the 8th meeting, Strasbourg, 21-23 November 2007), 10.

¹⁴⁵ IBA, Report of IBA's Human Rights Institute: Azerbaijan: Freedom of Expression on Trial (April 2-14), 47.

There are strong indications that the probation period for Azerbaijani judges violates the guarantees stipulated in article 6 para 1 ECHR. In this context, the Venice Commission as well as the ECtHR, for instance, called for the “irremovability” of judges by the executive branch during their term of office.

Judges of the Constitutional Court are appointed by the Milli Majlis, on recommendation of the President, which also clearly undermines the independence of judges. Furthermore, the president and the deputy president of the Constitutional Court are appointed by the President and not by a judicial entity, which is, as compared to other European juridical systems, an usual practice.

By virtue of the Constitution, judges enjoy immunity during their term of office. They can, however, be dismissed if they commit a criminal offence, following a motion of the President which is sent to the parliament. In case there are sufficient grounds to conduct a criminal prosecution against a judge, the prosecutor general is to send a motion to the JLC which can consider to lift the immunity of judges. However, the regulations of immunity of judges are considered to be too broad by international organization and it needs to be amended to balance the protection of judges against retaliation or pressure, especially from political sources, with the need to be able to carry out secret investigations prior to lifting of immunity.

The parliament is responsible for the dismissal of judges. The dismissal procedure can also be initiated by the President but only in case the judge has possibly committed a criminal offence, on the proposal of the Supreme Court. The Azerbaijani law contains a vague statement about the dismissal from the office of a judge. The law stipulates that a judge can be dismissed “in other cases of excluding criminal prosecution, including the cases when guilty verdict or decision prescribing obligatory measures of medical character are passed in respect of judge takes effect, the judge shall be dismissed from the office”¹⁴⁶. However, the law does not state more precisely what are these “other cases” and which entity is in charge of initiating the dismissal procedure.

¹⁴⁶ Law on Courts and Judges, art. 101.

IV. Proceedings

In 2014-2015, it could be observed how the Azerbaijani judiciary and the criminal justice system serve as a “tool of persecution” of human rights defenders (HRDs). The significant control over the judiciary, as described earlier, has led to a judiciary that is increasingly engaged to discredit critical voices through politically motivated convictions and charges. While monitoring trials of HRDs, which were conducted by the NHC and the HFHR, numerous violations of basic procedural guarantees, in particular the right to a fair trial, were observed, which raises serious doubts with regard to fundamental principles of due process. Furthermore, some practices, such as the use of metal cages in trials against HRDs, amount to a humiliating and degrading treatment. Based on the cases observed by the NHC and the HFHR, this report identifies key malpractices of Azerbaijani prosecutors and judges.

In view of politically sensitive cases (such as cases involving HRDs), judicial independence is ignored in Azerbaijan and judges are enormously responsive to political authorities. Generally, one can say that a criminal trial against a HRD can be regarded as a foregone conclusion that appears to be a “real” trial but has none of its substance. Judges align themselves with the motions of prosecutors and issue judgements which strongly resemble the prosecution’s written submissions and approve trial transcripts that bear no resemblance to the actual course of proceedings¹⁴⁷.

Politically motivated proceedings against HRDs have been criticized by various international organizations, such as the report of PACE¹⁴⁸, stating that criminal proceedings are instituted without a legitimate basis and without efficiently exercising the right to judicial review. In his *amicus curiae* brief supporting the case of the HRD Rasul Jafarov v Azerbaijan, which is pending before the ECtHR, the UN Commissioner of Human Rights highlighted that the opening of criminal investigations against the applicant followed shortly after the latter’s participation in a side-event in Strasbourg. He also claimed that the arrest and detention of the applicant was an attempt to silence his efforts to report on human rights abuses and aimed at preventing him from continuing his work¹⁴⁹.

¹⁴⁷ IBA, Report of IBA’s Human Rights Institute, Azerbaijan: Freedom of Expression on Trial (April 2-14), 47.

¹⁴⁸ PACE, Committee on the Honoring of Obligation and Commitments by Member States of the Council of Europe, The functioning of democratic institutions in Azerbaijan (24 June 2015).

¹⁴⁹ ICouncil of Europe, Commissioner for Human Rights, ‘Third party intervention’ (30 March 2015): <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2838397&SecMode=1&D-ocId=2259070&Usage=2>> accessed 12 August 2016.

On 17 March 2016, the ECtHR ruled that Rasul Jafarov's arrest and pre-trial detention was unlawful; more importantly, it recognized that the actual purpose of his detention was to punish him for his human rights activities. This was the very first time that the ECtHR found a violation of Article 18 based on the repression of HRDs as a result of their human rights activities. Finding a violation of the right to liberty, the ECtHR also ruled that there was insufficient evidence to justify the charges against Rasul Jafarov or his lengthy pre-trial detention, and that the lawfulness of his detention was not properly reviewed by the domestic courts¹⁵⁰. The cases of the unlawful arrests of Arif and Leyla Yunus, and Intigam Aliyev are pending before the Court¹⁵¹.

IV.1. Preventive measures

Detention

Pursuant to the Criminal Procedure Code of Azerbaijan, the right to liberty may be limited only in case of detention, pre-trial detention or imprisonment in accordance with the law¹⁵². Detention or arrest may only be made on the grounds stipulated in the Criminal Procedure Code and other laws¹⁵³. Only a court can issue pre-trial detention or placement in a medical or care institution¹⁵⁴. The person concerned should be immediately informed of the reasons for his/her detention or arrest, the nature of the suspicion or charge, the right not to self-incriminate himself/herself and having access to a defense lawyer. The preliminary investigator, prosecutor or judge should immediately release any person who was taken into custody or arrested unlawfully¹⁵⁶. Although the provisions of the Criminal Procedure Code seem in line with the international standards, the practice falls far short of them.

¹⁵⁰ Rasul Jafarov v Azerbaijan App no 69981/14 (ECHR, 17 March 2016).

¹⁵¹ Leyla and Arif Yunus v Azerbaijan App no 68817/14 (ECHR, 2 June 2016); Intigam Aliyev v Azerbaijan App no 68762/14 (ECHR, awaiting judgment).

¹⁵² Criminal Procedure Code, art. 14 para 1.

¹⁵³ Criminal Procedure Code, art. 14 para 2.

¹⁵⁴ Criminal Procedure Code, art. 14 para 3.

¹⁵⁵ Criminal Procedure Code, art. 14 para 4.

¹⁵⁶ Criminal Procedure Code, art. 14 para 5.

The number of cases of pre-trial detention requested by prosecution and granted by the courts is very high. There are no official statistics available. However, the number of pre-trial detentions were published, revealing the following¹⁵⁷:

	Sumgayit city Court	Absheron district Court	Neftchala district Court	Hajiqabul district Court	Gabala district Court	Gakh district Court	Agdash district Court
Applications on remand in custody lodged by prosecutors	296	234	42	76	24	21	54
Applications granted by the court	267	224	42	76	23	21	50
Applications dismissed by the court	29	10	0	0	1	0	4
Applications on extension of detention lodged by prosecutors	71	160	6	16	13	8	3
Extension granted by the court	71	154	6	16	13	8	3
Extension dismissed by the court	0	6	0	0	0	0	0
Appeals against detention orders lodged by defense lawyers	8	21	0	0	0	0	0
Appeals against extension lodged by defense lawyers	3	0	0	0	0	0	0
Prosecutors' appeals against the court's refusal on granting detention	13	10	0	0	1	0	1
Prosecutors' appeals against the court's refusal on extension of detention	0	6	0	0	0	0	0
Results of appeals	Not provided	Not provided	=	=	Not provided	=	Not provided

¹⁵⁷ The motions for public information were filled by lawyers practicing in Azerbaijan.

The statistics show that the pre-trial detention is almost automatically granted by the courts on the request of the prosecution, and that defense lawyers barely appeal against these decisions. Azerbaijani lawyers, who were interviewed for this report, stated that this is due to their lack of trust in a working appeal system in Azerbaijan.

In the observed trials against HRDs, the accused were held in detention, without access to a lawyer or the possibility to inform relatives about their detention. Moreover, the only way for lawyers to find their clients is to visit each court and waiting for them before the court to see if his/her client would be brought to that particular court¹⁵⁸. According to the law, the accused should be brought before the judge within 48 hours from his/her detention¹⁵⁹.

For example, one of the leaders of the Nida movement¹⁶⁰, the young activist Zaur Gurbanli, was arrested in the early morning in his house near Baku on 29 September 2013. Plain clothes men who identified themselves as members of the department for organized crimes of the Ministry of Interior entered the house, searched documents and forced him to get into their car. He was later held at an unknown location for 48 hours, without being allowed to contact a lawyer or his family, and without any official explanation for his arrest. Only on 1 October 2013, the press office of the Ministry of Interior announced that he had been placed in administrative detention for 15 days based on charges of refusing to cooperate with a police investigation into drug trafficking¹⁶¹. In this context, the ECtHR found that the failure of the Azerbaijani authorities to provide arrested persons with access to legal advice breaches the right to legal representation under article 6(3)(c) ECHR¹⁶².

In the case Ilgar Mammadov, leader of the REAL opposition movement, the ECtHR stated that “[i]n all their decisions in the present case, the domestic courts limited themselves to copying the prosecution’s written submissions and using short, vague and stereotyped formula for rejecting the applicant’s complaints as unsubstantiated. In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution’s requests and they cannot be considered to have conducted a genuine review of the “lawfulness” of the applicant’s detention”¹⁶³.

¹⁵⁸ Interview with lawyers practicing in Azerbaijan and dealing with politically sensitive cases.

¹⁵⁹ Criminal Procedure Code, art. 148 para 6, 7.

¹⁶⁰ Nida movement - an Azerbaijani civic movement founded in early 2011 by young people to achieve democratic and social changes in Azerbaijan.

¹⁶¹ Reporters Without Borders, ‘Opposition blogger arrested in growing crackdown ahead of next year election’ (3 October 2012) <<http://www.refworld.org/pdfid/506ead422.pdf>> accessed 12 August 2016.

¹⁶² Huseyn and others v Azerbaijan App no 35485/05, 45553/05, 35680/05 and 36085/05 (ECHR, 26 July 2011; revised 26 October 2011) 171–173; Asadbeyli and others v Azerbaijan App no 3653/05, 14729/05, 20908/05, 26242/05, 36083/05 and 16519/06 (ECHR, 11 December 2012; revised 11 March 2013) 133.

¹⁶³ Ilgar Mammadov v Azerbaijan App no 15172/13, (ECHR, 22 May 2014) para 118.1.

The Court further found that domestic courts consistently failed to verify the reasonableness of the suspicion underpinning the applicant's arrest and repeatedly ignored the applicant's submissions in this regard. The courts did not address any of the specific arguments advanced by the applicant in Ilgar Mammadov's written submissions, whereby he challenged the grounds for his arrest by relying on a number of case-specific factual circumstances. The politically motivated arrests of HRDs were also confirmed by the case of Rasul Jafarov v. Azerbaijan¹⁶⁴. Other cases, including the cases of human rights lawyer Intigam Aliyev, the HRD Leyla Yunus and her husband and the historian Arif Yunus, are pending before the ECtHR¹⁶⁵.

In some cases, the charges on which the detention was ordered differed significantly from the charges that were actually brought against the defendants. This was particularly visible in the cases of the investigative journalist Khadija Ismailova and the HRDs Leyla and Arif Yunus. In the first case, the charges concerned an alleged incitement to suicide, which, as the alleged victim later confirmed, never happened¹⁶⁶. While Khadija Ismailova was in pre-trial detention, her documents were searched and seized including financial accounts. In the case of Leyla and Arif Yunus, who first were accused of high treason and fraud, but this initial suspicion was never been brought to court.

Domestic courts repeatedly rejected motions for requests of change of preventive measure of pre-trial detention with home arrest in all observed cases, arguing that the accused may abscond from the investigation or obstruct it, without any reasonable justification. For example, as for the argument of absconding, the passports of the HRDs were seized and travel bans imposed which would have prevented them of leaving the country. The ECtHR highlighted that house arrest had been a sufficient restrictive measure in such a case¹⁶⁷. Instead, the decisions made by the local courts aimed at discrediting HRDs copied the submission of the prosecution and used vague arguments to back their decisions, thereby heavily undermining the HRD's the right to a fair trial.

Similarly, the conclusion that Leyla and Arif Yunus were likely to obstruct the investigation was not based on a review of any relevant facts. Both are well known and highly respected in Azerbaijan and their good reputation is essential for carrying out their work. Thus, there was no reason for them to interfere in the investigation¹⁶⁸.

¹⁶⁴ Rasul Jafarov v Azerbaijan App no 69981/14, [ECHR, 17 March 2016].

¹⁶⁵ Intigam Aliyev v Azerbaijan App no 68762/14 [ECHR, awaiting judgment].

¹⁶⁶ State Department, 'Azerbaijan, Human rights report' (2015) <<http://www.state.gov/documents/organization/253035.pdf>> accessed 12 August 2016.

¹⁶⁷ Mancini v Italy App no 44995/98 [ECHR, 12 October 2000]; Rasul Jafarov v Azerbaijan App no 69981/14 [ECHR, 17 March 2016].

¹⁶⁸ International Partnership for Human Rights, Civil Solidarity Platform, 'Report Justice Behind Bars: The persecution of civil society in Azerbaijan' (2015) <<http://iphronline.org/wp-content/uploads/2015/12/Azerbaijan-Justice-Behind-Bars-December-2015.pdf>> accessed 12 August 2016.

Prevention of leaving the country

The ban to leave Azerbaijan is one of the preventive measures which is excessively used in politically sensitive cases. Usually the person concerned will only learn about the decision that a travel ban has been imposed on him/her when he/she attempts to leave the country. For instance, Emin Husyenov, a HRD, was prevented from travelling to Istanbul by border police at Baku Heydar Aliyev International Airport on 5 August 2014. Only then he was informed that the office of the prosecutor general had imposed a travel ban on him.

Similarly, Leyla and Arif Yunus were not allowed to leave the country on 28 April 2014 at Baku Heydar Aliyev Airport. Their passports were seized but no formal decision was delivered to them.

IV. 2. Trial

Use of metal cages

In more than 40 cases against Azerbaijan, the ECtHR found a violation of article 6 ECHR¹⁶⁹. A practice that can be observed is the use of metal cages during court hearings. The way in which defendants are portrayed in court can have a huge impact on the equality of arms and influence judges and juries. It has become a common practice that metal cages are used especially in the post-soviet region, such as in Russia or Georgia. For instance, Rasul Jafarov and Intigam Aliyev, two Azerbaijani HRDs, were brought in handcuffs to the courtroom and were kept in metal cages. It is vital to underline that the ECtHR found that such a practice amounts to inhuman and degrading treatment¹⁷⁰.

During the court hearings, Leyla and Arif Yunus, Rasul Jafarov, Intigam Aliyev and Khadija Ismayilova were held in docks enclosed by glass, which prevented them from effective and confidential communication with their defense lawyers and actively participating in their hearings. The lawyers had to speak to the defendants through a microphone which was controlled by judges and at times turned off, preventing them from following and participating in the hearing. The courts failed to justify their decision for keeping the defendants isolated from those in the courtroom¹⁷¹.

¹⁶⁹ Cf. Layijov v Azerbaijan App no. 22062/07 (ECHR, 10 April 2014); Jannatov v Azerbaijan App no 32132/07 (ECHR, 31 July 2014); Insanov v Azerbaijan App no 16133/08, (ECHR, 14 March 2013); Efendiyev v Azerbaijan App no. 27304/07 (ECHR, 18 December 2014).

¹⁷⁰ Svinarenko and Slyadnev v Russia App no 32541/08, 43441/08 (ECHR, 17 July 2014).

¹⁷¹ International Partnership for Human Rights, Civil Solidarity Platform, 'Report Justice Behind Bars: The persecution of civil society in Azerbaijan' (2015) <<http://iphronline.org/wp-content/uploads/2015/12/Azerbaijan-Justice-Behind-Bars-December-2015.pdf>> accessed 12 August 2016.

Openness of the hearings

According to article 127 para 5 of the Azerbaijani Constitution, the Court hearings should be open for the public. Moreover, article 310 para of the Criminal Procedure Code states that “persons wishing to participate in a public hearing of the court should be allowed to enter the courtroom before the hearing or in-between if there are seats not taken in the room. Persons under the age of 16 who are neither parties nor witnesses should not be allowed to enter the courtroom. In order to ensure the safety of all people attending the hearing, the IDs of those admitted to the courtroom should be checked if requested by the court president”.

The law provides for public trials, except in cases involving state, commercial, or professional secrets or confidential, personal, or family matters. Foreign and domestic observers usually are allowed to attend trials, except those involving espionage or treason charges. As of the trials observed, the use of small courtrooms with inadequate seating and last-minute changes regarding starting times prevented members of the public to attend some hearings. Information on trial times and locations were generally available, although there were some exceptions, particularly in the Court of Grave Crimes¹⁷².

In view of HRDs cases, it was observed that small rooms were chosen for hearings which excluded some members of the public to attend them due to lack of space. Several of the early hearings in Intigam Aliyev case, were held in a small courtroom, which prevented many interested (foreign) observers, staff of foreign embassies, NGOs and journalists from attending the hearings. Although observers managed to facilitate the access to other hearings, the courtroom was crowded so that only a few observers were able to attend the hearing. The defendant of Intigam Aliyev lodged a motion to hold the hearings in a bigger room that then was dismissed by the court¹⁷³.

Another practice observed during the trials against HRDs, particularly in the case of Leyla and Arif Yunus, was to fill the room with people who were not related to the case and were unknown to the accused and their lawyers. Thus, only limited space was available for observers who intended to monitor the trial¹⁷⁴. Such practice was also underlined in the report of the OSCE office in Baku¹⁷⁵. One case involved a trial of four defendants in a courtroom in which only 20 people could be seated and which meant that relatives of the accused had ‘limited access to the courtroom’. In particular, trial monitoring is difficult in cases involving administrative detention where hearings frequently were held without notice and late at night.

¹⁷² U.S. State Department, Country report on Azerbaijan (2014).

¹⁷³ NHC and HFHR, ‘Fair trial for Azerbaijan’s prisoners of conscience’ (20 March 2015) <http://www.nhc.nl/news/Fair_trial_for_Azerbaijan___s_prisoners_of_conscience.html?id=290> accessed 12 August 2016.

¹⁷⁴ Ibidem.

¹⁷⁵ OSCE, Office in Baku, ‘Trial Monitoring Report: Azerbaijan’ (2011) 38 <www.osce.org/baku/100593> accessed 12 August.

Legal representation

Article 61 of the Azerbaijani constitution guarantees that everyone has the right to obtain 'qualified legal advice' and, in some cases, such advice 'should be provided pro bono, at the [government's] expense'. Article 61 para 3 also stipulates that everyone has the right to legal advice from the moment of detention, arrest or charge. Furthermore, article 127 para 7 of the Azerbaijani constitution also guarantees that every person has 'the right to legal representation at all stages of legal proceedings'.

It is generally acknowledged that there is a severe shortage of defense lawyers in Azerbaijan and the problem appears to be particularly acute outside of Baku, with reportedly has less than 200 lawyers for a population of approximately seven million people¹⁷⁶. Some towns are reported to have no practicing defense lawyers at all. Many defendants lack the financial means to instruct a lawyer of their choice and therefore rely on duty solicitors. The report of trial observation by **the OSCE project coordinator in Baku noted that, in a number of cases, defendants complained about the assistance of state-appointed lawyers only to have the trial judge take no action, and in many of those cases 'the state-appointed lawyers did not raise any motion during the trial, remaining passive throughout the court proceedings'**¹⁷⁷.

Although article 91.5.8 of the Criminal Procedure Code guarantees the accused the right to 'have unlimited opportunities and time to meet his defense counsel in private and in confidence', various forms of interference from the authorities in the course of trying to advise and represent their clients occur in practice, including being refused access to their clients and to the case files. In the case of *Isanov v. Azerbaijan*, the applicant complained that he had 'never been afforded an opportunity to meet with his lawyers in a confidential setting for a reasonably period of time' and that his lawyers 'were not allowed to access the Ministry of National Security Detention Facility in order to meet with him'. The ECtHR concluded that 'in the absence of any convincing rebuttal from the government' the applicant and his lawyers had not been given 'sufficient opportunities to consult in a confidential setting throughout the trial' and that these restrictions 'inevitably prevented the applicant from conversing openly with his lawyers and asking them questions that were important to the preparation of his defense', thereby violating the applicant's right to effective legal assistance under article 6(3)(c)¹⁷⁸.

¹⁷⁶ There are 900 practicing lawyers for nine million inhabitants in the whole country. Data from Eastern Partnership, 'Enhancing Judicial Reform in the Eastern Partnership Countries. Project report: The Profession of Lawyer' (May 2012) <http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/Eastern%20Partnership_Report%20on%20Lawyers_English_Final%20version_15%2005%202012.pdf> accessed 12 August 2016.

¹⁷⁷ OSCE, Office in Baku, Trial Monitoring Report (2011) 35.

¹⁷⁸ *Isanov v. Azerbaijan* App no 16133/08 [ECHR, 14 March 2013].

Lawyers representing clients in high profile and politically motivated cases, and other sensitive cases face pressure and, in the worst case, disbarment. Two lawyers representing imprisoned HRDs and journalists faced disciplinary proceedings which led to their disbarment for statements they made about the cases of their clients. Other lawyers were prevented from defending their clients. Additionally, NGO employees were banned from leaving Azerbaijan. For example, Khalid Baghirov acted as a defense lawyer for Leyla Yunus, Arif Yunus and Rasul Jafarov and many others who were civil society activist, until he lost his license to practice. Prior to this, he defended Ilgar Mammadov, an opposition politician who was prosecuted for his critical writings about the Azerbaijani government and his alleged involvement in the organization of the riots of Ismayili in 2013. At the appeal hearing, Khalid Baghirov told the appellate court that the court's verdict would have been very different if there had been justice and rule of law in Azerbaijan, referring to the fact that the government failed to implement the ECtHR's judgment concerning the HRD Ilgar Mammadov¹⁷⁹. His remarks were treated as an offense of the court and were referred to the board of the bar. Khalid Baghirov's licence to practice was immediately suspended and a request for his disbarment was sent to the court. On 10 July 2015, he was disbarred for an indefinite period.

Alayif Hasanov was one of the defense lawyers of Leyla Yunus. After visiting her in the pre-trial detention center, he publicly declared that his client was facing pressure from one of her cellmates, Nuriya Huseynova, who apparently received these instructions from the directorate of the detention center. Nuriya Huseynova filed a criminal complaint for libel against Alayif Hasanov. On 6 November 2014, the Yasamal District Court found Alayif Hasanov guilty and sentenced him to 240 hours of community service. The appeal against the conviction was dismissed. But while the appeal was pending before the Supreme Court, the board of the bar initiated disciplinary proceedings against him. He was disbarred on 3 July 2015¹⁸⁰.

Both lawyers are not allowed to represent clients in criminal matters. Such a practice is believed to have a strong chilling effect on lawyers, preventing them from taking cases of HRDs.

Access to case files

Article 6(3)(b) ECHR guarantees that each person charged with a criminal offences has the right to 'adequate time and the facilities for the preparation of his defense'. In addition, principle 21 of the UN Basic Principles provides that it is the duty of the competent authorities 'to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time'¹⁸¹.

¹⁷⁹ Ilgar Mammadov v Azerbaijan App no 15172/13, (ECHR, 22 May 2014).

¹⁸⁰ International Partnership for Human Rights, Civil Solidarity Platform, Report Justice Behind Bars: The persecution of civil society in Azerbaijan (2015), 34.

¹⁸¹ IBA, Report of IBA's Human Rights Institute, Azerbaijan: Freedom of Expression on Trial (April 2-14), 53.

According to article 91 of the Azerbaijani Criminal Procedure Code, the accused should enjoy basic procedural rights, including the right to ‘sufficient time for the preparation of his defense’, to ‘participate in investigative procedures or other procedures conducted at his own request’, to ‘acquaint himself with the records of investigative or other procedures in which he takes part, to make observations on the accuracy and completeness of the written record’ as well as to ‘require the inclusion of the necessary circumstances in the appropriate record’, to ‘take cognizance of the case file from the end of the investigation or the discontinuation of the criminal proceedings and to make copies of the necessary documents relating to it’, and to ‘acquaint himself with the record of the court hearing and to add observations to it’.

In the trials against HRDs, defense lawyers were, however, given only little time to prepare the defense. Similarly, the accused were not able to prepare his/her defense accurately due to the fact that they received the indictment just before the beginning of the preliminary hearing and the judges did not allow them to make themselves familiar with the reasons and grounds of the indictment¹⁸².

In *Huseyn and others v. Azerbaijan*, the applicants complained, among other things, that ‘neither they nor their lawyer had been given sufficient access to the prosecution’s evidence after the pre-trial investigation had been completed and before the trial had commenced nor had they enjoyed such access after the trial had commenced, despite their repeated complaints to that effect’. The ECtHR concluded that these restrictions gave rise to ‘serious problems’ as to the adequacy of the time and facilities afforded to the defense, violating the requirements of article 6(3)(b)¹⁸³.

Hearing the evidence

The ECtHR in *Bulut v. Austria*¹⁸⁴ introduced the concept of equality of arms, which means that both in criminal and non-criminal cases ‘everyone who is a party to such proceedings shall have a reasonable opportunity of presenting his case to the court under conditions which do not place him at substantial disadvantage vis-à-vis his opponent’. This means access to an opponent’s submission (in the given case to the bill of indictment) and equality of access to evidence relied on in the proceedings.

For example, trial observers in the case of *Intigam Aliyev’s* case noted the unequal and biased treatment of the defense by the presiding judges. Although both the prosecution and the judges regularly interrupted the testimony of victims and witnesses, defense lawyers were rebuked for doing the same.

¹⁸² Based on interviews with Azerbaijani lawyers, dealing with political cases.

¹⁸³ *Huseyn and others v Azerbaijan* App no 35485/05, 45553/05, 35680/05, 36085/05 (ECHR, 26 July 2011) para 175.

¹⁸⁴ *Bulut v Austria* App no 17358/90 (ECHR, 22 February 1996).

Furthermore, the prosecution was found to be leading the witnesses and judges. Objections from the defense were summarily dismissed. Moreover, judges rejected several lines of questioning that seemed to support the defense's statements and excused a key witness before the defense had finished questioning her. These observations further undermine the impartiality of judges as well as the fairness of proceedings¹⁸⁵.

During the trial of Intigam Aliyev, minutes of the previous hearings were not provided to defense attorneys, and the accused and his lawyers were deprived from effectively challenging the evidence adduced by the prosecution. On 22 April 2015, Intigam Aliyev was sentenced to 7,5 years in prison. He and ten other political prisoners were released in March 2016 by an administrative order signed by the President of the Republic.

With regard to Leyla and Arif Yunus case (as well as Intigam Aliyev and Rasul Jafarov cases), the Baku Grave Crimes Court largely referred to the evidence provided by the prosecution and dismissed the evidence provided by the defense without due consideration or providing reasoned grounds for rejection. In *Kraska v. Switzerland*, the ECtHR ruled that it is the duty of the national courts to conduct proper examination of the submissions, arguments and evidence adduced by the parties. Rejecting each defense's motion and request to further examine evidence may amount to a violation of the right to a fair trial, as enshrined in article 6 ECHR.

In Azerbaijan, prosecutors need to prepare their cases and collect evidence with greater objectivity. Moreover, a greater transparency should be ensured in their dealings with judges, so that the latter have a sound basis on which to deliver a ruling. Public prosecutors must therefore respect the right to a fair trial. In particular, they should ensure that the court is provided with all relevant facts and legal arguments necessary for the fair administration of justice. In addition, judges should also be kept informed about the public prosecutor's general priorities and criteria for action¹⁸⁶.

Another example concerns Rufat Zahidov and Rovshan Zahidov. Both are a cousin and a nephew of the critical journalist, Azadliq newspaper's chief editor and Azerbaijan Hour TV program host Ganimat Zahid, who currently lives in exile, respectively. Rufat Zahidov was arrested by officers of the Main Drug Enforcement Department in Baku city on 20 July 2015. Rovshan Zahidov was arrested in the Shamakhi region on 14 August 2015¹⁸⁷. Both men have said that they had been arrested due to Ganimat Zahid's activities.

¹⁸⁵ NHC and HFHR, 'Fair trial for Azerbaijan's prisoners of conscience' (20 March 2015) <http://www.nhc.nl/news/Fair_trial_for_Azerbaijan___s_prisoners_of_conscience.html?id=290> accessed 12 August 2016.

¹⁸⁶ CoE, Recommendation Rec(2000)19, The Role of Public Prosecution in the Criminal Justice System (6 October 2000).

¹⁸⁷ The Digest: Human Rights Situation in Azerbaijan (June 2016).

At the time of their arrests, they were also told at the police station that they had been arrested because of Ganimat Zahid. According to the indictment, 24.101 grams of heroin were found on Rufat Zahidov and in his vehicle, and, 32.306 grams of heroin were found in a pocket of Rovshan Zahidov's jacket at his home. During the court proceedings, only one witness of the defense was heard, other witnesses were rejected, whereas eleven witnesses of the prosecution gave evidence¹⁸⁸.

IV. 3. Defamatory public statements

It is common that Azerbaijani judges comment on the wrongdoing of the accused in a pending trial which violates the presumption of innocence stipulated in article 63 of the Azerbaijani constitution and in article 6 para 2 ECHR. According to the ECtHR, the presumption of innocence is violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty¹⁸⁹.

For example, the public prosecutor general's office and the Ministry of Interior issued a joint press statement on the protest in Ismayilli on 29 January 2013 in which they accused I. Mammadov to be responsible for social instabilities¹⁹⁰. The ECtHR ruled that the statement, assessed as a whole, was not made with necessary discretion and circumspection. Whereas in the end of the relevant paragraph the authorities noted that the applicant's actions would be "fully and thoroughly investigated and [would] receive legal assessment", this wording was negated by a preceding unequivocal declaration, contained in the same sentence, that those actions by the applicant had been "illegal". Moreover, by stating in the same paragraph that "it has been established that ... [the applicant] ... made appeals to local residents ..., such as calls to resist the police, not to obey officials and to block roads", the authorities essentially prejudged the assessment of the facts by the courts. As such, the impugned statement could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law¹⁹¹.

¹⁸⁸ On 28 June 2016, Baku Grave Crimes Court sentenced the chief editor's nephew Rufat Zahidov and his cousin Rovshan Zahidov to 6 years in prison each.

¹⁸⁹ *Ilgar Mammadov v Azerbaijan* App no 15172/13 (ECtHR 22 May 2014) para 126.

¹⁹⁰ The statement reads: "Following the carrying out of inquiries, it has been established that on 24 January 2013 the Deputy Chairman of the Musavat Party, Tofiq Yaqublu, and the Co-chairman of the REAL Movement, Ilgar Mammadov, went to Ismayilli and made appeals to local residents aimed at social and political destabilization, such as calls to resist the police, not to obey officials and to block roads. Their illegal actions, which were calculated to inflame the situation in the country, will be fully and thoroughly investigated and receive legal assessment".

¹⁹¹ *Ilgar Mammadov v Azerbaijan* App no 15172/13 (ECHR, 22 May 2014).

Similarly, the public prosecutor general’s office made a public statement, entitled “Khadija Ismayilova’s illegal acts have been exposed”. The statement was published in the media¹⁹², aiming at officially informing the public on a criminal trial initiated against Khadija Ismayilova. In the case of Leyla and Arif Yunus, a joint statement was made by the public prosecutor general’s office and the Ministry of National Security¹⁹³. This statement officially informed the public on the criminal trials initiated against the applicants. It noted that the applicants had cooperated with the Armenian intelligence and failed to comply with the requirements of the tax legislation¹⁹⁴. This statement was later part of a complaint filed to the ECtHR.

The ECtHR then found a violation of article 6 para 2 ECHR with regard to the statements which contained wording amounting to an express and unequivocal declaration that the applicants had committed criminal offences. As such, they prejudged the assessment of the facts by the competent court and could not but have encouraged the public to believe the applicants guilty before they had been proved guilty according to law. In its decisions on the execution of the court’s judgments¹⁹⁵, the Committee of Ministers expressed concern about the repetitive nature of the breach of the principle of presumption of innocence by high-ranking officials despite the fact that many rulings of the ECHR already dealt with this issue. Furthermore, the Committee insisted on the necessity of rapid and decisive action in order to prevent similar violations in the future.

IV. 5. High conviction rate

The analysis of statistics shows that the conviction rate in criminal cases is very high in Azerbaijan, especially that the majority of indictments brought by the prosecution succeeded, as the accused was found guilty. In 2013 and 2014, respectively 87 percent and 85 percent of indictments led to a conviction. The high conviction rate in criminal cases undermines the integrity of the judiciary, indicating that judges are subservient to the prosecution. Courts do not assess the evidence brought by the prosecution and do not take into account the rights to a fair trial of the accused sufficiently¹⁹⁶.

Indications ¹⁹⁷	2013	2014
Number of reported crimes per 100,000 population	238	261
General number of reported crimes	22381	24607
Number of cases where bill of indictment was lodged (according to the Ministry of Interior)	14841	15560
Number of convicted persons (According to the Ministry of Justice)	12980	13342
Number of criminal cases submitted to the court of first instance		12708
Number of acquittals	27	48

¹⁹² Khadija Ismayilova v Azerbaijan App no. 30778/15 (communicated on 26 August 2015).
¹⁹³ Leyla Yunusova and Arif Yunusov App no 68817/14 (communicated on 5 January 2015).
¹⁹⁴ Leyla and Arif Yunusov App no 68817/14 (communicated on 5 January 2015).
¹⁹⁵ For example, in its decision of 4 December 2014 on the execution of the ECHR judgment in Ilgar Mammadov v Azerbaijan.
¹⁹⁶ Please see the table below. In 2013, 14,841 bill of indictments were introduced and 12,980 courts adjudicated 12,980 convictions (approx. 87 percent). In 2014, 15,560 bill of indictments were introduced and 13,342 convictions were adjudicated (approx. 85 percent).
¹⁹⁷ This is official data provided by the State Statistic Committee. Statistics for 2015 has not been published yet.

V. Conclusions

Overall, Azerbaijani political authorities use the country's criminal justice system to persecute HRDs. In particular, the judiciary is heavily undermined by the executive branch, which controls its appointment and promotion process. The international community, including GRECO, the Venice Commission and Transparency International, condemned Azerbaijan's judicial systems as corrupt and dependent on the government, which repeatedly fails to undertake adequate reforms to improve the status quo of the judiciary.

The crackdown on civil society and the imprisonment of several HRDs in 2014 shows how the government infiltrated the judiciary and engaged it to silence critical voices. Detentions of HRDs were often made on the grounds of financial irregularities. For instance, the ECtHR confirmed that the detention of the Azerbaijani HRD Rasul Jafarov was based on political motives and that the juridical system was abused to prevent him from his work. There are many other cases on HRDs pending at the ECtHR.

Severe violations of the right to a fair trial could be observed at all stages of criminal proceedings in Azerbaijan, such as judges copying the written submissions of the prosecution and approving trial transcripts that bear no resemblance to the actual course of proceedings. Moreover, HRDs suffered from degrading treatment in courtrooms, which included metal cages and public statements by public officials aiming to diminish the authority of the accused and discredit them in the public.

The lack of separation of powers and the powerful role of the executive branch is visible not only through the many convictions of HRDs, resulting in prison sentences of up to 8.5 years, but also through a single administrative decision made by the President in 2016, which led to the release of eleven HRDs.

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In 2014-2015, an unprecedented crackdown on (members of) the civil society took place in Azerbaijan, in the course of which dozens of human rights defenders (HRDs), journalists and other critical voices were imprisoned and key human rights organizations were forced to suspend their operations. The judiciary and prosecution are increasingly engaged in the indictment and sentencing of HRDs, thereby using the criminal justice system to persecute those who oppose government policies. The separation of powers no longer exists in Azerbaijan, since the executive branch heavily infiltrates both parliament and the judiciary.



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