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Committee on Legal Affairs and Human Rights

The Implementation of judgments of the European Court of Human Rights – 11th report

Information note following the rapporteurs visit to Azerbaijan, November 2022

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1. Introduction

1. I undertook a fact-finding visit to Azerbaijan on 20-23 November. I met with the Ombudsperson; the Chairman of the Human Rights Committee of the Milli Mejlis; the Office of the Prosecutor General; members of the Supreme Court; the Deputy Minister of Justice; the Presidential Administration; a member of the Constitutional Court; the member of the Venice Commission in respect of Azerbaijan; civil society representatives; lawyers representing individuals in human rights litigation; individuals who have been the applicants in Article 18 cases before the ECtHR; and family members of victims of torture. I am very grateful to all I met with for their time and useful insights into the challenges and efforts being made to implement judgments of the European Court of Human Rights.

2. According to the Annual Report 2021 on the Execution of Judgments, Azerbaijan has the 4th largest number of cases pending execution (271 cases) of Council of Europe member States. However, Azerbaijan is only 20th in the number of cases closed in that year (12 cases).

3. During my visit I heard about a significant number of legislative and practical reforms being implemented at the national level, especially in the field of justice. I was pleased to hear about the good recent cooperation with the Department for Execution of Judgments in advancing action to address the implementation of ECtHR judgments, including a number of useful projects being run in cooperation with the Council of Europe, especially those relating to the implementation of ECtHR judgments, which follows from actions set out in the Action Plan in respect of Azerbaijan. I also heard about the positive experiences and improved expertise that had been the result of seconding national experts from the judiciary or other public services to Council of Europe bodies such as the ECtHR.

2. National processes for implementing ECHR judgments & Accountability

4. The responsibility for coordinating the implementation of ECHR judgments in Azerbaijan lies with the relevant office within the Presidential Administration. They are thus well positioned to coordinate and to push forward the reforms needed to give effect to human right judgments. I heard that whilst Azerbaijan used to have capacity issues with implementing judgments, significant action was now being taken to change that dynamic and new progress was being made. Azerbaijan had closed 25 ECtHR cases under the supervision of the Committee of Ministers this year, and had submitted 30 Action Reports, so there was progress in the right direction. It should be noted that this is part of a positive trend - Azerbaijan closed 6 cases in 2020, 12 in

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2021 and at least 25 in 2022, and further progress in closing cases can be hoped for in the coming year. The Presidential Administration also noted the improvements in reports to the Committee of Ministers on the execution of judgments.

5. I also heard how the Presidential Administration had established, in early 2022, a working group on the execution of judgments. This includes the most relevant agencies relating to the implementation of ECtHR judgments, including the Ministry of Justice, Ministry of Interior, Office of the Prosecutor General, Supreme Court and others. This working group enabled a coordinated focus on the key challenges that needed to be resolved. The working group was improving the flow of information and action in addressing judgments. The understanding of what was required by ECtHR judgments seemed good within the interlocutors from the Presidential Administration, even if there was a significant caseload and backlog of cases to work through. However, there was perhaps less of an appreciation of the measures needed to address ECtHR judgments relating to Azerbaijan beyond this office. It can be hoped that the working group will assist in this.

6. I also heard about positive developments in relation to tools for implementing ECtHR judgments, such as through the recent Council of Europe Project on the execution of ECtHR judgments that is up and running since Autumn 2022. I welcome the pursuance of such projects as well as close cooperation between the Azerbaijani authorities and the Department of Execution of Judgments to help dealing with the backlog of cases.

7. Most interlocutors considered that the Government was efficient at paying just satisfaction, but that there were greater delays in taking action to address general measures or indeed individual measures – with some suggesting that there was a need to incentivise timely action to address general measures, such as by introducing a system of penalties for delays in taking action to implement ECtHR judgments. Many noted the crucial importance of individual or general measures that were needed to prevent reoccurrence.

8. There seem to be particular issues with addressing individual measures in cases requiring a referral to the Supreme Court following an adverse judgment of the ECtHR. I heard from the Supreme Court that it is working meticulously through the cases before it, and that it had been working hard to develop a system of binding precedent to ensure uniform application of the law by the judiciary in order to ensure that human rights were applied appropriately in all cases. Some lawyers suggested that there could be a benefit in enabling applicants who have been successful before the ECtHR to refer their own cases directly to the Supreme Court for reopening. Further consideration should perhaps be given to how to ensure swift action in resolving individual measures following ECtHR judgments and to ensure that all unnecessary administrative burdens to enforcing ECtHR judgments are removed. Further reflection might also be given to maximising the possibility for the Constitutional Court to play a greater role in establishing Convention-compliant interpretations of the law (where such interpretations are possible).

9. More generally, it could be useful to reflect on what more might be done to improve the domestic accountability of the Government for addressing ECtHR judgments in a timely manner. For example, might the Government improve communications relating to domestic action (and actions outstanding) in enforcing and implementing ECHR judgments? Might the parliament or civil society have a greater role in finding solutions for giving effect to human rights judgments and in holding the Government to account? Should the ombudsman's remit include action to supervise implementation of human rights judgments – or should the ombudsman even have the right of legislative initiative to help in resolving human rights issues?

3. Access to the ECtHR

10. Lawyers reported having little confidence in the national judiciary and that they had to rely significantly on bringing cases before the ECtHR in order to resolve a human rights issue. Reforms to bolster the independence of the judiciary therefore remain of the utmost importance to ensure respect for the rule of law, and adequate domestic application of ECHR rights by national courts. I was deeply troubled to hear allegations that applications to the ECtHR were going missing in the post – in particular applications alleging a violation of Article 18 ECHR. It goes without saying that no national authority should interfere with the ability of individuals or lawyers to lodge applications before the ECtHR. These concerns warrant further investigation and, if founded, action must be taken at the national level to ensure that no applications are intercepted. Moreover, further reflection should occur at the international level to find alternatives for the ECtHR to receive applications, such as by e-mail, if postal methods can no longer be relied upon.

4. Specific Judgments

11. The *Mammadli* Group¹ concerns political-motivated arrests and prosecutions of human rights defenders, civil society activists and a journalist, all subject to arrest and detention in 2013-2016, contrary to Article 18 and 5 ECHR.² As these cases relate to the misuse of the criminal law intended to punish and silence these individuals; contrary to Article 18 ECHR, these cases are a priority both for this report and for the Council of Europe in general. This group have all now been pardoned and released, but in order to address the individual measures for this group, and to eliminate all consequences of these violations, their convictions need to be quashed. In this light it was positive to hear from the Supreme Court that it is working its way through the remaining 6 cases to remove the consequences of these prosecutions and that all of the cases should be dealt with in 2023, to move towards closing supervision of this group of cases. Ensuring the independence of the judiciary, including through the independence of the Judicial Legal Council, is a core part of the general measures required for this Group.

12. Respect for the separation of powers and the independence of the judiciary is also a theme in relation to respect for ECtHR judgments in Azerbaijan. A number of judgments require improvements to the independence of the judiciary in order to be fully implemented.³ Other examples were more specific, such as a senior judge in the Supreme Court also being the Government Agent responsible for running ECtHR litigation and for implementing ECtHR judgments in Azerbaijan. An amalgam of roles between the executive and the judiciary, even if done with the best intentions, can risk undermining the separation of powers and the independence of the judiciary.

13. The *Muradova v Azerbaijan* Group⁴ relates to excessive use of force and ill-treatment by the police during demonstrations. The *Mammadov (Jalaloglu)* Group⁵ relates to ill-treatment and/or torture during arrest and police custody and the lack of adequate criminal investigations relating to allegations of torture or mistreatment. In relation to action to combat torture and mistreatment, and to ensure investigations and prosecutions were taken as a response to torture by law enforcement, the Office of the Prosecutor General assured us that appropriate action was always taken and that all involved took any torture allegations seriously. However, we heard from lawyers that problems persisted and that safeguards should be improved to prevent the risk of confessions being forced through torture. Such safeguards could include video-taping all confessions and improving access by private lawyers during the interview stage during the first 48 hours of detention. We also heard varying accounts of the approach of the courts and prosecutors to pursuing torture cases and in securing tough action was taken against this most egregious abuse. I would therefore encourage the Office of the Prosecutor General in its serious and important work to eradicate all impunity in relation to torture and to ensure that the full weight of the law is felt by all of those implicated in torturing a person in military, or law enforcement custody. I would also encourage the authorities to seriously consider introducing improved safeguards such as video-taping all confessions and interrogations, and ensuring timely access to private independent lawyers for those in police detention. It was pleased to hear that efforts were being made to ensure adequate measures were in place to address the Article 3 cases in 2023, and that the authorities were aware of the need to focus on eliminating the use of excessive force during demonstrations.

14. I heard from the Ministry of Justice that they had excellent relations with civil society. In respect of the *Ramazanova* Group⁶, relating to the freedom of association (Article 11 ECHR), and impediments to registering associations that acted as a barrier to an effective civil society, the Ministry of Justice informed me that around 4000 NGOs were now registered and around 100 per year were getting registered. I can only encourage thorough practical progress to enable all such associations to be registered so that these issues can be a thing of the past.

¹ [Mammadli v Azerbaijan](#) – and see here for the [status of execution](#).

² In some cases violations of Articles 3 (freedom from torture and inhuman or degrading treatment or punishment), Article 6 (right to a fair trial), Article 8 (right to family and private life), Article 10 (freedom of expression) and Article 1 of Protocol 1 (right to peaceful enjoyment of possessions) were also found.

³ Improving the independence of the judiciary is a requirement for addressing the general measures in the *Mammadli* Group (as above), as well as the *Namat Aliyev* Group ([Namat Aliyev v Azerbaijan](#) (2010) and see here for the [status of execution](#)). The *Namat Aliyev* Group relates to violations of the right to free elections (Article 3 of Protocol 1), specifically relating to the arbitrary application of electoral legislation and the absence of adequate safeguards against arbitrariness – in particular relating to the approach taken by the courts in considering such cases. The fairness of civil and criminal proceedings is also relevant to a number of Groups of cases, including the [Isanov](#) Group.

⁴ [Muradova v Azerbaijan](#) (2009) – and see here the [status of execution](#).

⁵ [Mammadov \(Jalaloglu\) v Azerbaijan](#) (2007) – and here are details on the [status of execution](#).

⁶ [Ramazanova v Azerbaijan](#) (2007).

15. A significant proportion of Azerbaijan's ECtHR cases pending implementation relate to the consequences of the conflict with Armenia. Many of these cases relate to accommodation for internally displaced persons, under the *Mirzayev Group*.⁷ These cases concern people who were forced to leave their homes due to the conflict, many of whom moved into apartments belonging to others (there are over 500 domestic cases that still require execution). These cases make up around 40% of Azerbaijan's overall unimplemented cases. However, there are also other cases relating to the conflict. We heard how progress had been made in some areas, but that due to the sensitivity of such matters, and concerns over reciprocity, progress was not as fast as it might have been for a less politically sensitive matter. It would be useful to consider how cooperation can be improved with Armenia over the implementation of respect of human rights issues arising from the conflict. I would also encourage Azerbaijan to take action to resolve matters relating to internally displaced persons – if this group of cases were resolved this would significantly reduce the overall statistics for unimplemented Azerbaijani cases by around 40% which would greatly ease the burden on the authorities responsible for dealing with the execution of judgments and would radically improve the statistics relating to Azerbaijan's implementation of ECtHR judgments.

16. I heard significant concerns relating to the freedom of the press, whether in relation to arrests of journalists and cameramen or in relation to the new media law. Concerns relating to the new media law have been expressed in the context of examination of the *Khadija Ismayilova*⁸ Group of cases, with calls being made for the Azerbaijani authorities to adopt measures to bring the media law fully in line with Council of Europe standards. Also as concerns the execution of judgments, the disproportionate penalties for defamation are a concerning impediment to the freedom of the press. In the *Mahmudova and Agazade Group*⁹, the ECtHR found a breach of the right to freedom of expression (Article 10 ECHR) given the deterrent effect on free speech posed by the potential of a long prison sentence for defamation. Whilst the Presidential Administration considered that this was not often applied in practice, they accepted that legislative change was needed. In this respect, I was pleased to hear serious thought being given to the different option for addressing this judgment, varying from full decriminalisation to removal of the punishment of imprisonment. Whichever option is chosen, it must ensure that defamation laws do not have an undue impact on free speech and on the freedom of the press, as a crucial pillar of our democracies. I fully encourage the necessary legislation action to be taken as swiftly as possible in order to remove this harsh punishment from the statute book.

17. I heard about continued concerns relating to the holding of demonstrations. The right to protest as part of the freedom of expression (Article 10 ECHR) and the freedom of assembly and of association (Article 11 ECHR), is vital to democracy. Therefore, impediments to the holding of demonstrations have a significant impact on human rights and democracy – both of those detained for attending demonstrations, and of those prevented from attending demonstrations which were not allowed. The *Gafgaz Mammadov Group*¹⁰ of cases relate to unsatisfactory legislation regulating the freedom of assembly that does not meet the requirements of foreseeability and precision, including arbitrary interferences with the right to freedom of assembly; abusive dispersal of peaceful demonstrations and public gatherings; and unjustified arrests and administrative convictions of participants. I heard from civil society and from lawyers of continued practical and administrative barriers to the holding of demonstrations as well as instances of those attending demonstrations – including the media and cameramen reporting on demonstrations – being arrested. I would encourage a greater focus by the authorities on enabling and protecting the crucial right to peaceful protest (including the right to freedom of expression and to freedom of assembly) as an important pillar of our democratic systems and the democratic values at the heart of this Organisation.

5. Conclusions

18. Overall, my impression is that we can expect more progress in the right direction and the Azerbaijani authorities seem to be taking positive steps to better coordinate and to accelerate action in addressing outstanding ECtHR judgments – including through the deployment of a working group on the execution of judgments, as well as through cooperation programmes and projects run in collaboration with the Council of Europe's department for the execution of judgments. It may, however, be helpful to reflect on what more might be done to improve the domestic accountability of the Government for addressing ECtHR judgments in a timely manner, perhaps through involving a greater role for civil society, the Ombudsman and/or Parliament. Most interlocutors considered that the Government was efficient at paying just satisfaction but that quicker mechanisms are needed for addressing individual measures, and that there is a need to incentivise timely action to address general measures that were needed to prevent the recurrence of human rights violations. I encourage the timely action of the Azeri authorities, including the Supreme Court, in addressing the

⁷ [Mirzayev v Azerbaijan](#) (2009).

⁸ [Khadija Ismayilova v Azerbaijan](#) – see here for [status of execution](#).

⁹ [Mahmudov and Agazade v Azerbaijan](#) (2009) and [status of execution](#).

¹⁰ [Gafgaz Mammadov v Azerbaijan](#) (2015) – and see here for [status of execution](#).

outstanding cases as swiftly as possible, in particular to promote the independence of the judiciary and core democratic values such as the freedom of expression and of association. I look forward to hearing about a much more significant number of cases being closed in the year to come as these new processes yield further positive results.