

Some Justice Out of Repression and Reprisals: On the Plight of Human Rights Defenders in Azerbaijan

Philip Leach

Introduction

Sticking your neck out for human rights in Azerbaijan has proven to be especially perilous in recent years. Lawyers, activists, journalists and others have been prosecuted, denied their liberty, banned from leaving the country, convicted and imprisoned for considerable periods. Civil society organisations have been prevented from receiving external funding and have been closed down. The legal profession, in particular, has been a recent target, with lawyers being suspended and then disbarred, some for having the temerity to tell the media about their clients' ill-treatment in Azerbaijani prisons.

In response, the global human rights apparatus has been employed and engaged to full effect, with cases being despatched to the European Court of Human Rights, rights-monitoring bodies within the Council of Europe, and UN bodies vigorously weighing in, and international civil society actively taking up the gauntlet. The former chair of the Azerbaijani NGO, Human Rights Club, Rasul Jafarov, has run the full gamut of such experiences - from being prosecuted and imprisoned in 2014 to being pardoned, released, compensated. He also had his conviction quashed in April 2020 after having won his case in Strasbourg and with pressure being exerted on his behalf by the Committee of Ministers.

This contribution to the HRLIP/OSJI series seeks to review and assess the extent to which there has been successful implementation of the cases brought on behalf of the Azerbaijani human rights defenders, and to consider what factors were instrumental in achieving progress for this beleaguered group.

Targeting human rights defenders and the Strasbourg response

A former reporter at the Institute for Reporters' Freedom and Safety, Rasul Jafarov was the founder of the Human Rights Club and was instrumental in the 'Sing for Democracy' campaign in 2012 (when Azerbaijan hosted the Eurovision Song Contest), as well as the 'Art for Democracy' initiative. The pressure exerted by the Azerbaijani authorities on Jafarov has been sustained over several years. From 2011 onwards, the authorities repeatedly refused to register Human Rights Club, which the European Court, in 2016, [found to be unlawful](#), in breach of Article 11 of the European Convention, both because of the inadequacies of the state registration law and the failure of the Ministry of Justice to comply with the domestic law. In July and August 2014, Jafarov discovered that he was banned from leaving the country, his bank accounts were frozen and the Human Rights Club's office was searched and documents seized. He was then summoned to the Prosecutor General's Office, where he was charged with illegal entrepreneurship, large-scale tax evasion and abuse of power, and immediately subjected to pre-trial detention. By April 2015, high level embezzlement had been added to the list of charges: he was convicted on all counts and sentenced to six and a half years' imprisonment.

The European Court's judgment in the [Jafarov case](#) (which resulted in his being pardoned and released on the same day) was one of the first in a series of remarkable decisions concerning embattled Azerbaijani human rights defenders, including [Intigam Aliyev](#), [Anar Mammadli](#),

investigative journalist [Khadija Ismayilova](#), [Leyla Yunusova](#) and [Arif Yunusov](#) and board members of the [civic movement, NIDA](#), as well as opposition politician [Ilgar Mammadov](#). In essence, the Court found that all of their prosecutions amounted to an abuse of the criminal law. Not only was there no reasonable suspicion for arresting and detaining them, and an absence of any serious judicial oversight, but also even more fundamentally -- and exceptionally -- the Court went further to find that in prosecuting them, the aim of the Azerbaijani authorities had specifically been to silence and punish them - for their activities in the fields of human rights, social rights and electoral monitoring, and to stop any future such work. More than that, as a result the Court found an unprecedented series of violations of Article 18 of the Convention, because of the authorities' ulterior motives. They were restricting the applicants' rights for purposes other than those prescribed by the Convention.

How to implement Article 18 judgments?

The Court's novel recent utilisation of [Article 18](#) to signal states' bad faith in bringing about political prosecutions – hitherto rarely applied and little understood – has been the subject of much commentary (see, for example, [here](#), [here](#), [here](#), [here](#) and [here](#)), but the focus of this post is to consider the implications of such findings for the restitution of the applicants' rights and the implementation of these judgments. How would these decisions impact upon the human rights defenders' extant criminal convictions and, in any event, how would President Ilham Aliyev's authoritarian regime respond to this level of scrutiny and accountability at the international level?

The European Human Rights Advocacy Centre ([EHRAC](#)) represents a number of these applicants, including Jafarov and Aliyev. Given the heavily detrimental impact on Azerbaijani civil society, and human rights defenders in particular, these were identified as strategic priorities for EHRAC. So, too for the European Implementation Network ([EIN](#)), which, having adopted a strategy of prioritising the shrinking of civil society space across Europe, highlighted this group of cases at its periodic briefings for diplomats in Strasbourg. The Article 18 misuse of criminal law verdicts in these cases were linked to findings that the applicants' pre-trial detention had been unjustified, in breach of Article 5 (Right to Liberty and Security) of the Convention. In other words, the very decision to bring criminal prosecutions was the target, not the fairness of the ultimate trials as such (these are the subject of separate litigation). Accordingly, the key question implementation raised here was whether or not the remedy required by these judgments was the quashing of the applicants' convictions. At EHRAC we took the view that this should indeed happen: a breach of Article 18, together with Article 5, meant that the criminal proceedings as a whole were irreparably tainted.

Although there was no clear precedent for this, in a smattering of previous Article 18 cases, against [Moldova](#) and [Ukraine](#), the decisions had led to convictions being quashed. In August 2016 the Azerbaijani Supreme Court rejected Jafarov's application for his case to be re-opened. Our response was to commission an [expert opinion](#) from Julian Knowles QC who concluded that the Court's findings in the *Jafarov* case made it clear that the whole criminal case against him was politically motivated, and accordingly that his conviction was based on procedural errors or shortcomings 'of such gravity that a serious doubt is cast on the legitimacy of his conviction.'

The Committee of Ministers upping the ante

The evolving stance of the Committee of Ministers, the body that supervises the implementation of European Court decisions, towards these cases over time is clearly detectable. The initial focus of its decisions (between 2014-2016) was understandably on getting the politician Ilgar Mammadov released from custody in Baku. When they also started to consider Jafarov's case in 2017, the Committee at first limited itself to requesting information about his application to re-open his case. By June 2019, however, the Committee was [requesting information](#) from the Azerbaijani authorities more pointedly as to 'measures which could be taken to erase the consequences of the impugned criminal proceedings', and by September their position had clarified and hardened, [stipulating](#) that the Court's findings 'make it clear that Azerbaijan is required rapidly to eliminate all the remaining negative consequences of the criminal charges brought against each of the applicants, principally by ensuring that the convictions are quashed and deleted from their criminal records'. By December 2019, this position had been [extended](#) to 'the elimination of all other consequences of the criminal charges.... including by fully restoring [the applicants'] civil and political rights in time for the next parliamentary elections'. The Committee's March 2020 [Interim Resolution](#) deeply regretted that 'the applicants' convictions still stand and they still suffer the negative consequences thereof, including the inability fully to resume their professional and political activities'.

A month later – in April 2020 – the Azerbaijani Supreme Court finally quashed the convictions of [Mammadov](#) and [Jafarov](#), as well as awarding them compensation and confirming a separate right to claim pecuniary damages (although the other applicants still await such an outcome). How did such a significant turnaround, albeit long-awaited, come about?

Facilitating implementation

There were a number of factors at play in these cases, which as Sandoval, Leach and Murray have [argued](#), come together to facilitate successful implementation. Firstly, there was the Court's application of Article 46 in order to facilitate the implementation of judgments, by proposing specific steps to be taken by the authorities. The use of Article 46 in this way provides a stronger degree of judicialization of the execution process, which undoubtedly strengthened the Committee's resolve over time. These developments arose on the back of the concerted pressure exerted in relation to the Mammadov case – given the grave situation of an opposition politician unlawfully imprisoned by a European regime – and the unique, successful use of [infringement proceedings](#) (under Article 46(4) of the Convention) in his case, which led to his release in August 2018. But beyond that, the Court used a series of judgments to ratchet up the pressure over time and the Court and the Committee worked in tandem – reflecting what Donald and Speck [have suggested](#) amounts to an evolving and pragmatic remedial approach by the Court, which seeks also to assist the Committee in its execution role.

Two years after the first *Mammadov* judgment, the *Jafarov* case was the first in which the Court explicitly found that an activist (as opposed to a politician) had been targeted because of their human rights work. Another two years on, in the *Aliyev* judgment, in 2018, drawing on five previous similar cases, the Court underlined that they were not 'isolated incidents', but reflected 'a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of

criminal law in defiance of the rule of law.’ This led the Court to apply Article 46 and require the Azerbaijani authorities to take steps to protect this group, by ceasing the arrests, detention and prosecutions. For Mr Aliyev himself, implementation meant restoring his professional activities, with measures that should be ‘feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court’. Two years further on again, in 2020, the Court found that the cases of *Khadija Ismayilova* and *Leyla Yunusova and Arif Yunusov* were also part of this pattern, taking into account the increasingly harsh and restrictive laws regulating NGO registration and activities.

The development of the Committee’s position, as outlined above, tracked the Court’s escalations. By grouping similar cases together, the Committee sought to reveal and underline the systemic nature of the problem. This was underscored by the Council of Europe’s Commissioner for Human Rights, who [intervened](#) as a third party in four of the Azerbaijani cases, to identify a ‘clear pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities’. One especially significant moment was the judgment in the third *Mammadov* case in May 2019, confirming that Azerbaijan had not complied with the first *Mammadov* judgment, thereby vindicating the Committee’s 2017 decision to invoke Article 46(4) and instigate infringement proceedings. A month later, in June 2019, the Committee took note of the Court’s finding in that decision that the original finding of a violation of Article 18, together with Article 5, ‘vitiating any action resulting from the imposition of the charges’ (§ 189). The Committee also continually relied on the Court’s finding of a pattern in these cases, which it again underlined in its March 2020 [Interim Resolution](#). This is the multi-layered system of European implementation in action, as [identified](#) by Speck.

As Donald and Speck have [elaborated](#), the lack of specificity of Court judgments may create uncertainty as to what is required by way of implementation. Here, questions about the effects of an Article 18 judgment, coupled with stipulations to ‘restore the professional activities’ of applicants like Aliyev may have created a degree of ambiguity. Yet, to its credit, the Committee stepped in decisively to clarify that implementation required the quashing of convictions and the end to all other detrimental consequences.

A second influential element has been the very active engagement of civil society. In addition to multiple submissions made by Ilgar Mammadov himself, EHRAC made eight submissions on individual measures as regards Jafarov (in the period from 2016-2020) and six relating to Aliyev (2019-2020). Furthermore, there were five submissions concerning general measures, lodged by seven different NGOs, both national and international. Equally instrumental were the EIN briefings on these cases (nine [EIN briefings were](#) held in Strasbourg, or online, between 2016 and 2020) which helped to ensure that government delegates were continually apprised of the latest developments, and remained fully aware of the very detrimental consequences for the applicants—frozen bank accounts, travel bans, the inability to stand for election—of their extant convictions. By involving the applicants themselves in some of these briefings (for example, through video presentations), they also addressed the lack of ‘victim engagement’, which Donald, Long and Speck have [noted](#) is a deficiency of the European system.

Conclusion

It has been a long and difficult road for Azerbaijani human rights defenders. After years of severe, state-sanctioned repression, the 2020 acquittals of Ilgar Mammadov and Rasul

Jafarov were highly significant, and represented vindication of the efforts of the many actors involved. Given the absence of space for advocacy at the national level, the [interventions of the international human rights mechanisms](#) have been decisive here, aided and supported by intensive civil society efforts.

Much remains to be done, however, before these cases can be said to have been fully implemented. First and foremost, the convictions of the other human rights defenders need to be quashed, but these cases also raise more far-reaching questions as to what steps need to be taken in order for the applicants' professional and political activities to be restored and for there to be a genuinely conducive environment for the defence of human rights in Azerbaijan. It has been argued that this will require the reform of [legislation and practice controlling the regulation of NGOs](#), and NGO funding, as well as fundamental [judicial reform](#). There is no doubt that considerable tenacity has been required, by everyone concerned, to keep these issues in the spotlight in recent years, but there is still more to do.

Philip Leach is Professor of Human Rights Law at Middlesex University and the Director of the European Human Rights Advocacy Centre (EHRAC).