

**Misuse of Administrative Discretion against Human Rights Defenders and
Enforcement of ECtHR Judgments in Azerbaijan**

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Introduction

Azerbaijan is one of the countries which restricts human rights and civil liberties to a large extent. Although the Third Chapter of the Constitution from Articles 24 to 71 guarantees human rights and civil liberties in practice violations are common. According to the Freedom House, Azerbaijan is considered as a “not free” country which scored 2 out of 40 in political rights and 8 out of 60 in civil liberties.¹ Human rights defenders, who promote the civil, political, as well as, social and economic rights, act independently and criticize the policy and actions of the government regarding the situation of human rights are one of the vulnerable groups which face the restrictions as a result of administrative discretion. The government uses different tools to restrict their activity. In the fourth periodic report of Azerbaijan conducted by the Human Rights Committee in 2016, it was indicated that

“the Committee remains concerned about extensive restrictions on freedom of expression in practice, including (a) Consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.”²

Generally, human rights defenders are not able to seek and get remedy for violations of their rights before the domestic courts, that is why they apply to the international Courts and regional human rights fora. This Capstone Project will focus on the infringement of human rights defenders’ rights as have been established by the European Court of Human Rights. The analysis will show the types of rights violations imposed by the government because of their

¹ Freedom House, *Freedom in the World 2020*, <https://freedomhouse.org/country/azerbaijan/freedom-world/2020>

²United Nations International Covenant on Civil and Political Rights Human Rights Committee, *Concluding observations on the fourth periodic report of Azerbaijan*, 16 November, 2016
<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhshv33kpiIN1yQcFINQGeFnqM5IxR4PQMZWvxmoWXyTsshELrTf%2FHJH%2FqsIqI6FD8OFwu28r7iZSlAYRm9fDeUVCTGadLoglKdYRd4jrLMRra> accessed on 30 April, 2020

activity and will formulate recommendations as to what kind of measures should be taken by the Council of Europe to achieve full implementation of these judgements and protect human rights defenders more effectively. The first chapter will show the overall situation of human rights defenders and NGOs, how domestic law and administrative discretion are used for their harassment. The second chapter examines some cases established by the ECtHR and Court's approach regarding the systematic infringement to human rights defenders' rights and compliance of individual and general measures by Azerbaijan. Additionally, this part will also contain the current situation of human rights defenders and civil activists in Azerbaijan. In the third chapter, the implementation of two pilot judgments one against the United Kingdom, another against Italy will be reviewed and compared with Azerbaijan. The reason for choosing these countries as comparators is it took a long time for the countries to comply with the judgments.

Chapter I. The use of domestic law and tools to harass Human rights defenders and NGOs.

1.1. *Human Rights defenders*

The Guideline on the Protection of Human Rights Defenders indicates that “States should not subject human rights defenders to arbitrary deprivation of liberty because of their engagement in human rights activity.”³ Additionally, the UN Declaration on Human Rights Defenders⁴ and the Declaration of the Committee of Ministers on Council of Europe on the same subject-matter⁵ contain principles and directions for the protection of human rights defenders. Although Azerbaijan is a member of both organizations, the implementation of the obligations formulated in these Declarations continues to go unimplemented in Azerbaijan.

Arresting is one of the methods to harass the human rights defenders. The authorities justify their arrest with seemingly unrelated grounds, such as hooliganism, tax evasion, illegal entrepreneurship, not obeying to police and so on. Arresting human rights defenders serves to provoke and in reality, results in a chilling effect on silencing them. Periodically, the police arrest human rights defenders, as happened during 2013-2014 in when some human rights defenders and civil activists faced criminal prosecutions.⁶ Additionally, the travel ban is another punitive measure frequently applied against human rights defenders.⁷

³ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Guideline on the Protection of Human Rights Defenders*, 2014

⁴United Nations Human Rights Office of the High Commissioner, *Declaration on Human Rights Defenders* <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>

⁵United Nations Human Rights Office of the High Commissioner, *Declaration on Human Rights Defenders* <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> accessed on 28 April 2020

⁶ *Azerbaijan: New Arrests, Convictions of Critics, Rampant Abuses as Baku Assumes Council of Europe Chairmanship*, May 13, 2014, <https://www.hrw.org/news/2014/05/13/azerbaijan-new-arrests-convictions-critics> accessed on 6 June 2020

⁷ Council of Europe, *Commissioner Mijatovic urges Azerbaijani authorities to respect freedom of expression, improve access to lawyers and uphold rights of internally displaced persons*. 11 December, 2019 <https://www.coe.int/en/web/portal/-/commissioner-mijatovic-urges-the-azerbaijani-authorities-to-respect-freedom-of-expression-improve-access-to-lawyers-and-uphold-the-rights-of-internall> accessed 5 June, 2020

1.2. **Human Rights Lawyers**

Lawyers who take human rights violations to the international level suffer from the restrictions in their profession. Previously, lawyers who were not members of the Bar Association could defend victims of a violation of human rights in the domestic courts. They were able to engage with politically sensitive cases. However, after 2017 amendments to the Code of Civil and Administrative Procedure and Act on the Bar, the permitted activities of practising lawyers have been restricted. According to the Act on the Bar, lawyers who are not the members of the Bar Association cannot act as advocates and defend the rights of their clients before the domestic courts. It is a widespread practice that lawyers are demanded to be members of the Bar Association to proceed before domestic courts. This requirement serves to increase the quality of legal services. However, in Azerbaijan, this requirement put human rights lawyers in a vulnerable position. The Bar Association of Azerbaijan is an independent organization by law, however, in reality, this organization is dependent on the executive branch and is subject to the political decisions and pressure.

In Azerbaijan, lawyers should take an exam to become a member of the Bar Association. The exam consists of two parts. In the first part theoretical knowledge of the lawyers is examined and candidates who are successful in this part are invited to an interview as the second part of the exam.⁸ Not surprisingly, practising human rights lawyers passed the first part of the exam but were failed in the interview part. Additionally, Lawyers Intigam Aliyev and Annagi Hajibayly were rejected to be members after the reorganization of the Bar Association. Moreover, the Bar Association does not just prevent human rights lawyers to become its members, also lawyers who were already members of the Association face harassment. They are excluded from the Bar Association or face disciplinary measures when they exercise their

⁸ Azerbaijani Bar Association, *Admission, Requirements for Candidates*.
<https://barassociation.az/en/recruitment> accessed on 7 April, 2020

rights as advocates. As a result, their licenses are suspended for some period by the Bar Association. For instance, Lawyer Yalchin Imanov was a member of the Bar Association and he represented clients in politically sensitive cases. He was disbarred after his statements in the media about the torture and ill-treatment which his client had suffered. Despite Imanov applied to the Prison Service and the Prosecutor's Office to investigate the situation of his client, no official steps were taken. Instead of investigation Prisoner Service applied to the Azerbaijani Bar Association to impose disciplinary measures against Imanov because he damaged the reputation and work of Prison Service as a state structure. The Azerbaijani Bar of Association requested to the competent local Court to disbar Imanov as a result which he lost his access as an advocate to the hearings before domestic courts.⁹ A former member of the Board of the Azerbaijan Bar Association Irada Javadova was disbarred based on disciplinary proceedings taken against her. Her disbarment was grounded on the submission of her client who alleged Javadova talked to the media about her situation without a notarized power of attorney. Javadova's rights were violated according to the proceedings initiated under the Act on Lawyers and Advocates Activities. Furthermore, her evidence submitted regarding the situation was not taken in to account by the Disciplinary Commission, she was also deprived of the opportunity to present her case at the disciplinary hearing before Presidium, as well as, she was not given a copy of the opinion of the Disciplinary Commission.¹⁰

Another restriction imposed on the human rights lawyers is the suspension of their license for some period. The report conducted by the European Human Rights Advocacy Center in August 2019 shows that 20 human rights lawyers who are or were the members of the Azerbaijani Bar

⁹ *Lawyer disbarred for disclosing his client's torture allegations in prison seeks justice from the European Court of Human Rights*, 18 July 2019, <http://ehrac.org.uk/news/yalchin-imanov-disbarred/> accessed on 28 April, 2020

¹⁰ *Azerbaijan: Lawyer Irada Javadova disbarment decided in unfair proceedings*, June 18, 2018, <https://www.icj.org/azerbaijan-lawyer-irada-javadova-disbarment-decided-in-unfair-proceedings/> accessed 3 April, 2020

Association have been faced different types of the above-mentioned harassment.¹¹

Furthermore, according to the International Commission of Jurists, there is a problem in Azerbaijan regarding the legal profession in general:

“the system of governance of the legal profession in Azerbaijan does not ensure that its procedures of admission and disbarment are presided over by an independent and impartial body, nor the requirement that disciplinary offences are sufficiently prescribed by law, or disciplinary procedures are in line with the obligations of the State under article 6.1 ECHR. The judicial system does not constitute a sufficiently thorough, effective and independent judicial review to be able to compensate for the fundamental flaws of the admission and disbarment procedures.”¹²

Considering above-mentioned obstacles and the non-independence of Azerbaijani Bar Association human rights lawyers are not able to freely carry out their job.

1.3. ***The Non-governmental organizations (NGOs)***

Not only individual human rights defenders are subject to administrative and other types of restrictions, but similar ones are also imposed on the activities of NGOs which they work for. The Constitution of Azerbaijan guarantees the right to right to freedom of association. According to Article 58 (II) of the Constitution: “Everyone has the right to set up any organization, including a political party, professional union and any other public association or to enter an already existing association. The independent activity of all associations is guaranteed.”¹³ However, Azerbaijan uses legislation to restrict the activity of the NGOs. The procedure of registration and permitted activities of NGOs are detailed in the Civil Code, Law on State Registration and the Law on non-governmental organisations (public associations and foundations) (hereinafter: the Law on NGOs)

¹¹ European Human Rights Advocacy Center, *Azerbaijan human rights lawyers who have been disbarred, suspended or criminally prosecuted*, August 2019
<http://ehrac.org.uk/wp-content/uploads/2019/08/List-of-disbarred-lawyers-in-Azerbaijan-14.08.19.pdf>

¹² Written submissions on behalf of the International Commission of Jurists (ICJ) on *Hajibeyli v. Azerbaijan (Application no. 6477/08)*, *Intigam Aliyev v. Azerbaijan (Application no. 10414/08)*, *Bagirov v. Azerbaijan (Application no. 28198/15)*, 8 November, 2016

<https://www.icj.org/wp-content/uploads/2016/11/ICJ-Bagirovoters-AmicusBrief-Azerbaijan-2016-Final.pdf>

¹³ *Azerbaijan 1995 (revised 2016)* https://www.constituteproject.org/constitution/Azerbaijan_2016?lang=en

Azerbaijan following Russia made modifications to the legislation and as a result, the activities of human rights NGOs have been limited. Independent NGOs often cannot get registration from the state authorities and face limitations in the available funding. It is in the Ministry of Justice's competence to register NGOs. In 2009, the Law on Grants was amended, and an NGO cannot accept grants from their donors without registration with the Executive Authorities.¹⁴ Another amendment was made to the above-mentioned Law on NGOs on 17 October 2014, which requires the foreign donors also to register with relevant executive authorities to be able to provide grants for NGOs. On 22 October 2015, another burden for the donors was introduced. It is their obligations to seek permission from the Ministry of Finance for each project which they want to fund.¹⁵ Furthermore, in line with the amendment made to the Law on NGOs in 28 December 2015, the Ministry of Justice adopted the rules for reviewing the activities of NGOs which gives it extensive powers to further control NGOs.¹⁶ Even if following all the requirements stipulated in the legislation, NGOs are still denied registration and to remedy their rights, they have applied to the European Court of Human Rights under Article 11.

¹⁴ Ismayil Z and Remezaite R, *Shrinking Space for Civil Society in Azerbaijan, tackling restrictive laws Criminal prosecutions Tax penalties*, June 2016, 14 <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>

¹⁵ Ismayil Z and Remezaite R, *Shrinking Space for Civil Society in Azerbaijan, tackling restrictive laws Criminal prosecutions Tax penalties*, June 2016, 12 <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>

¹⁶ International Center for Not for Profit Law, *Azerbaijan*, 16 April, 2020 <https://www.icnl.org/resources/civic-freedom-monitor/azerbaijan> accessed on 9 June, 2020

Chapter II. The Case law of ECtHR on situation of Human Rights defenders and NGOs in Azerbaijan

2.1. Some illustrative cases

When reviewing the judgments of the European Court of Human Rights regarding the violations human rights defenders face, it is clear that the motives for their harassment are based primarily on their activities

In the case of *Rasul Jafarov v. Azerbaijan*¹⁷, the applicant was charged with large scale tax evasion and illegal entrepreneurship. In his complaint to ECtHR, he complained about his unlawful detention and argued that there was “no reasonable suspicion” against him that would have justified the measures taken against him. Additionally, there was no reason to prolong his arrest.¹⁸ The applicant also raised a complaint under Article 18 of the Convention stating that his arrest aimed to silence him and prevent him from continuing his works as a human rights defender.

The Court noted that the arrest of the applicant was widely criticized internationally and took into consideration of the opinions of the third parties such as the Council of Europe Commissioner for Human Rights or the Helsinki Foundation for Human Rights, and reviewed standards set by the Venice Commission or the Office of the UN High Commissioner for Human Rights.

The Court held:

“the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual’s arrest and continued detention. Accordingly, during the period the Court is considering in the present case, the applicant was deprived of his liberty in the absence of a “reasonable suspicion” of his having committed a criminal offence.”¹⁹

¹⁷ *Rasul Jafarov v. Azerbaijan (Application no. 69981/14)*

¹⁸ *Ibid* § 85

¹⁹ *Ibid* § 133

In that case, the Court also found a violation of Article 18 in conjunction with Article 5 § 1. The applicant was one of the human rights defenders who were presented in the pro-government media as the “fifth column” for foreign interests, a national traitor and so on by high ranking government officials. He was also blamed to damage the image of the country by describing the situation of human rights violations abroad. Taking into account the general situation in the country, the Court mentioned that the situation of the applicant should not be viewed in isolation, activists cooperating with international organizations face similar attitudes and sanctions.

In the case of *Hajibeyli and Aliyev v. Azerbaijan*²⁰ the applicants were also lawyers specializing in human rights who had been refused to be accepted to the Azerbaijani Bar of Association by the Presidium. They claimed that their rejection for the membership to ABA was due to their criticism on the situation of the legal profession in the country which leads violation of their freedom of expression and freedom of association. The applicant presented the transcripts from the meeting where their application for the membership was examined in support of their claim.²¹ Furthermore, the search of their offices and the seizure of the document related to the cases pending before the ECtHR resulted-in their opinion- the infringement of their right of individual petition.

The Government argued that there was no proof showing that applicants’ refusal for membership to the ABA was connected to the exercise their right to freedom of expression and reliability of the records presented by them disputed. Furthermore, applicants did not provide the domestic courts and Court with these documents.²² Moreover, the Government referred to the transitional provisions of the law claiming that holding the special permit is not enough for acceptance to the ABA it serves only for exemption from qualification examination, and

²⁰ Hajibeyli and Aliyev v. Azerbaijan (Application no. 6477/08 and 10414/08)

²¹ Ibid, §12

²² Ibid, §12

lawyers still should meet the criteria to become legal counsel.²³ In case Hajibeyli and Aliyev v. Azerbaijan as a third party the International Commission of Jurists expressed its concern regarding the independence and impartiality of the ABA.²⁴

the Court reviewed the domestic legislation and held that despite the Government claimed non-reliability of the documents submitted by the applicants, they did not provide the Court “the versions of the records of the Presidium’s meetings of 19 November 2005 and 27 January 2006 that they consider to be authentic.”²⁵

The Court emphasized:

“No reasons were specified by the Presidium for its decisions refusing the applicants' admission to the ABA. On each occasion, it simply announced the dismissal of the applicants' applications for admission to the ABA, without stating whether or not they had failed to comply with any requirement in respect of candidates for admission to practice as legal counsel.”²⁶

The Court concluded that the refusal of the applicants for the acceptance to ABA was based their views and criticism and it was the infringement of the Article 10 of the Convention as the measures were taken against them lacked a legal basis and thus were not prescribed by law as required by Article 10(2).

Furthermore, the Court found the infringement of Article 34 of the Convention. The second applicant Mr Aliyev who presented a new complaint that his prevention to access “entire case files relating to the applicants’ pending cases before the Court had amounted to a hindrance to the exercise of the applicants’ right of individual petition under Article 34 of the Convention”²⁷.

The Court expressed that while the documents were returned after two and a half months “it nevertheless remains the case that those files related to the alleged interference, through a restriction of their freedom of expression, of the applicants' possibility to exercise their profession as lawyers.”²⁸

²³ Ibid, § 47

²⁴ Ibid, §48

²⁵ Ibid, §51

²⁶ Ibid, §58

²⁷ Ibid, §66

²⁸ Ibid, § 68

In the case *Rasul Jafarov and Others v. Azerbaijan*²⁹ the applicants were three human rights defenders Rasul Jafarov, Emin Huseynov and Sabuhi Gafarov who created an association named "Human Rights Club". In their submission to the ECtHR, applicants complained of having been repeatedly denied registration for their NGOs with the State Authority and claimed that it was an infringement of their right to freedom of association under Article 11 of the Convention.

The Government cited to the Article 5.4.1 of the Law on State Registration according to which “provided that, if appointed, the powers of the legal representative had to be indicated in the decision founding the association” and claimed that despite the applicants designated Rasul Jafarov as the association’s legal representative, they did not specify his powers. Therefore, the applicants did not provide the documents required by the law and the Ministry of Justice acted following the law when it returned the documents for rectification³⁰

In its judgement, the ECtHR cited the relevant international documents such the Opinions of the Commission for Democracy through Law (Venice Commission) regarding the legislation on non-governmental organisations, as well as, its amendments in Azerbaijan.

The Court held that the Ministry of Justice did not comply with the requirements of the Convention in two respects. First, the referenced provision of the Law on Registration on which the third denial to register the association had been based as interpreted and applied by the authorities did not meet the “quality of law”. Second, the Ministry of Justice did not comply with the procedural requirements set by domestic law. Thus, non-registration of the association did not meet “prescribed by law” criterion under Article 11 § 2.³¹ The Court found the infringement of Article 11.

²⁹ Rasul Jafarov and Others v. Azerbaijan (*Application no. 27309/14*)

³⁰ Ibid, § 52

³¹ Ibid, § 95

The reviewing of cases delivered by the ECtHR concerning human rights defenders and civic activists shows that generally, the Court takes into consideration the overall situation in the country by referring to local and international reports and third parties. In particular, the Court takes the same approach other cases regarding human rights defenders and civil activists where similar issues are present, such as a “troubling pattern” which indicates that there are “structural problems” leading to arbitrary administrative detention.³²

2.2. Assessment of the implementation of the individual and general measures.

Article 41§1 of the European Convention on Human Rights indicates “The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties”³³. However, Azerbaijan resists to fully implement judgments delivered by ECtHR regarding civic rights activists and human rights defenders. On 5 December 2017, an ‘infringement’ proceedings against Azerbaijan was started under Article 46 (4) because of not fully implementing of the judgment in *Ilgar Mammadov v. Azerbaijan*³⁴. The applicant, in that case, was a civil rights activist and politician. It was the first time in the history of the Council of Europe that a country faced the possibility of having its membership terminated for non-implementation of judgment, although this possibility is rather remote considering the operation and quorum requirement of the Committee of Ministers.

In March 2020, the Committee of Ministers held a meeting about the implementation of the judgments delivered in cases of politicians and a group of activists and human rights defenders

³² Council of Europe Parliamentary Assembly, *Reported cases of political prisoners in Azerbaijan*, § 4. <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28584&lang=en>

³³ Council of Europe. *European Convention on Human Rights*, 26

³⁴ Council of Europe, *Committee of Ministers launches infringement proceedings against Azerbaijan*, 5 December 2017, https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/council-of-europe-s-committee-of-ministers-launches-infringement-proceedings-against-azerbaijan? accessed on 3 May, 2020.

against Azerbaijan. The current situation of the implementation of individual measures has been reviewed.

In the meeting held in December 2019, the Committee requested Azerbaijan to make sure that all accusations against the applicants are removed without any criminal record retained and obliged the state to ensure that applicants can fully exercise their civil and political rights until the parliamentary elections. In January 2020, submissions were made by the applicants about the executions of the judgments in their cases, three applicants complained that because of their criminal record had not been removed, they were not able to participate in the parliamentary elections.³⁵

Finally, on 23 April 2020, Azerbaijan fulfilled its obligations regarding cases *Ilgar Mammadov v Azerbaijan and Rasul Jafarov v Azerbaijan*. The Supreme Court of Azerbaijan acquitted both of them and their criminal record was accordingly erased.³⁶ Additionally, the Supreme Court defined compensation ₼234,000 (\$138,000) for Mammadov and ₼57,400 (\$34,000) for Jafarov for moral damage.³⁷ However, there are still seven cases in this group which await full execution.

General Measures

The ECtHR required the non-arbitrary use of criminal law to limit the freedom of expression.³⁸ Additionally, it has emphasized that it is essential to stop a repetitive violation of the

³⁵ *Ilgar Mammadov v. Azerbaijan*

<https://hudoc.exec.coe.int/eng#%7B%22EXECIdentifier%22:%5B%22004-1866%22%5D%7D>

³⁶ European Commission, *Azerbaijan: Statement by the Spokesperson on the acquittal of Ilgar Mammadov and Rasul Jafarov*, 24 April, 2020.

https://ec.europa.eu/neighbourhood-enlargement/news_corner/news/azerbaijan-statement-spokesperson-acquittal-ilgar-mammadov-and-rasul-jafarov_en accessed on 27 April 2020

³⁷ *ReAl Party's Mammadov and Jafarov acquitted of criminal charges*, 23 April, 2020.

<https://www.meydan.tv/en/article/real-partys-mammadov-and-jafarov-acquitted-of-criminal-charges/> accessed on 7 May 2020

³⁸ Council of Europe Committee of Ministers, *Decisions on the case against Azerbaijan* adopted at 1214th meeting on 4 December, 2014. § 5

presumption of innocence by members of the government and the Prosecutor General's Office despite the judgments of the Court.³⁹

On December 5, 2017, Interim Resolution of Committee of Ministers adopted. Regarding the compliance with general measures, Azerbaijan expressed that on February 10, 2017, Executive order "On improvement of operation of the penitentiary, humanization of penal policies and extension of the application of alternative sanctions and non-custodial procedural measures of restraint". was signed by the president of the Republic of Azerbaijan. This order responded to several issues which were raised in judgments by the Court. The executive order requires the existence of reasonable suspicion at the time of arrest, as well as, taking into account alternative measures rather than arresting.⁴⁰

"Further humanisation of penal policies in Azerbaijan was listed among the aims of the document. It said that in the application of measures of restraint by investigation authorities and courts, provisions of criminal procedure law concerning grounds for arrest should be strictly complied with, and the level of application of alternative sanctions and measures of procedural compulsion extended to attain aims of punishment and measure of restraint through non-custodial means."⁴¹

Moreover, in October 2017, the Law on amendments to the Criminal Code was adopted by Milli Medjlis (Parliament) of Azerbaijan. Beside sanctions alternative to imprisonment, the law also provided conditional release after having served two-thirds imprisonment.⁴² Furthermore, in the case of *Intigam Aliyev v. Azerbaijan* which is included in Ilgar Mammadov group of cases, the ECtHR expressed that

"having regard to the specific group of individuals affected by the above-mentioned pattern in breach of Article 18, the necessary general measures to be taken by the respondent State must focus, as a matter of priority, on the protection of critics of the government, civil society activists and human rights defenders against arbitrary arrest and detention. The measures to be

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c0b81

³⁹ Ibid, §7

⁴⁰ Interim Resolution CM/ResDh (2017)429, Execution of the judgment of the European Court of Human Rights Ilgar Mammadov against Azerbaijan, § 14

⁴¹ Ibid, §15

⁴² Ibid, §20

taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the no-repetition of similar practices in the future.”⁴³

A similar approach was followed in the 1362nd meeting of Deputies which held December 3-5, 2019. It was mentioned that in the case of civil society activists and human rights defenders who criticize the government, it is crucial to realize effective measures for protection arbitrary arrest and detention.⁴⁴ In the latest 1369th meeting it was expressed that there was no new information regarding the general measures and this meeting focused on the examination of individual measures.⁴⁵

2.3. The current situation towards human rights defenders and civil activists

It was widely reported and debated, and there are different opinions regarding this development in the domestic discussion. On 9 February 2020, snap parliamentary elections were held in Azerbaijan. According to International election observation mission, "voters were not provided with a meaningful choice due to a lack of real political discussion" and there was "significant procedural violations during the counting".⁴⁶ While opposition parties Musavat and National Council boycotted participation, members of the ReAl party participated. Neither Rasul Jafarov nor Ilgar Mammadov who are members of the ReAl, could participate in the last parliamentary election because of their criminal record. From ReAl party, Erkin Gadirli won a seat in the parliament. Furthermore, after president Ilham Aliyev's speech about negotiations with the opposition and Ilgar Mammadov's positive reaction and support for the compromise

⁴³ Intigam Aliyev v. Azerbaijan (*Applications nos. 68762/14 and 71200/14*) § 226

⁴⁴ Council of Europe Committee of Ministers *H46-2 Ilgar Mammadov group v. Azerbaijan* (Application No. 15172/13) Supervision of the execution of the European Court's judgments, adopted at the 1362nd meeting 3-5 December, 2019

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168098f832 accessed on 3 June 2020

⁴⁵ Ilgar Mammadov v. Azerbaijan

[https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:\[%22004-1866%22\]}](https://hudoc.exec.coe.int/eng#{%22EXECIdentifier%22:[%22004-1866%22]})

⁴⁶ International Election Observation Mission, Republic of Azerbaijan-Early Parliamentary Elections, 9 February, 2020

https://www.osce.org/files/f/documents/5/0/445759_0.pdf

were received sceptically by the many opposition activists.⁴⁷ One of the reasons for the scepticism is that new elections are not expected for at least 5 years which means Mammadov and Jafarov's political activity will be limited during this period. Another reason is that other human rights defenders and civil activists have not been acquitted and the persecutions of the government's critics continue. For instance, Tofiq Yagublu is an independent journalist and deputy chair of the Musavat party. In 2013, he was also arrested on the same ground as Ilgar Mammadov (accusation to organize Ismayilli riot) and was sentenced for 5 years imprisonment. He was released in 2016.⁴⁸ Tofiq Yagublu has also been considered innocent according to the ECtHR judgment because there was no reasonable suspicion to arrest him⁴⁹. After having been pardoned, Yagublu still faces harassment because of his political activity. In October 2019, he was convicted for one-month administrative detention and physical pressure by the police after participation in the peaceful protest in Baku.⁵⁰ He has been detained for the third time three months on March 23 2020, he was accused of hooliganism after President Ilham Aliyev's speech on 19 March, alleging that opposition wants to destabilize the country and "will be no place for traitors and corrupt representatives of the fifth column in the new political configuration".⁵¹ Additionally, during the Covid-19 pandemic, civil activists and

⁴⁷ *Azerbaijani activists react with scepticism to ReAl party acquittals*, 25 April 2020

<https://oc-media.org/azerbaijani-activists-react-with-scepticism-to-real-party-acquittals/> accessed on 23 May, 2020

⁴⁸ *The former political prisoner in Azerbaijan accused of violence and arrested for the third time*, 23 March, 2020

<https://jam-news.net/former-political-prisoner-in-azerbaijan-accused-of-violence-and-arrested-for-third-time/> accessed on 30 March 2020

⁴⁹ Yagublu v. Azerbaijan (*Application no. 31709/13*)

⁵⁰ Human Rights Watch, *Azerbaijan: Opposition Leader Arrested, Free Tofiq Yagublu; Drop Bogus Charges against him*, 25 March, 2020.

<https://www.hrw.org/news/2020/03/25/azerbaijan-opposition-leader-arrested> accessed on 3 April 2020

⁵¹ Kucera J, *Azerbaijan's president suggests coronavirus may require a crackdown on the opposition*. March 19, 2020

<https://eurasianet.org/azerbaijans-president-suggests-coronavirus-may-require-a-crackdown-on-opposition> accessed on 23 April 2020

journalist who criticized the government faced charges of disobeying the police and breaking lockdown.⁵²

⁵² *Azerbaijan: Crackdown on Critics Amid Pandemic*, April 16, 2020
<http://hrw.org/news/2020/04/16/azerbaijan-crackdown-critics-amid-pandemic0>
accessed on 23 April, 2020

Chapter III. Compliance with pilot judgements: the United Kingdom and Italy

To compare the situation of Azerbaijan on the execution of judgements with other members of the Council of Europe, United Kingdom and Italy have been chosen: the analysis primarily aims at identifying good practices in advocating successfully for full compliance with the judgments of the ECtHR in situations that are politically loaded and where governments may easily mount popular support for their resistance to the implementation of judgments delivered in cases of “unlikeable” applicants.

One further reason for choosing these countries was the fact that in both states it took a long time to reach a solution that ensures compliance of the judgments. The two pilot judgments examined here concerned the prisoners’ voting rights in the UK and prison overcrowding in Italy.

3.1. The United Kingdom

In 2005, the case of *Hirst v. the United Kingdom (No.2)*⁵³ the ECtHR found that the complete disenfranchisement of those serving a prison sentence constituted a breach of Article 3 of Protocol No 1. Despite the Court considered that there was a wide margin of appreciation and states enjoy a quite much latitude in designing their electoral systems and granting the right to vote to persons on remand by the 2000 Act was an improvement, it stated that the section 3 of 1983 remained “a blunt instrument”. According to the Court:

“The provision imposes a blanket restriction on all convicted prisoners in prison. It applies automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1.”⁵⁴

⁵³Hirst v. The United Kingdom (No.2) (*Application no. 74025/01*)

⁵⁴ Ibid § 82

However, the UK resisted executing the judgement. There were several attempts by the government to comply with the judgment but those were unsuccessful.⁵⁵

The Court received nearly 2000 complaints regarding the prisoners' voting rights in the UK. On November 23, 2010, the Court established pilot judgment *Greens and M.T v. the United Kingdom*⁵⁶ where referred to the *Hirst v. the United Kingdom* case. The Court demanded the United Kingdom present legislative proposals to comply with the judgment. In the Pilot Judgment, it was left for the respondent state to decide how to comply with the judgment. The Court did not prescribe the content of future legislative proposals but required proposals for the amendment of section 3 of the 1983 Act and if possible, section 8 of the 2002 Act within the 6 months.⁵⁷ Despite the Court's decision, the violation of the prisoners' voting rights continued. Similar cases from prisoners alleging the violation of the right to vote followed by the cases such as *Firth and Others v. the United Kingdom*⁵⁸, *McHugh and others v. the United Kingdom*⁵⁹, *Millbank and others v. the United Kingdom*⁶⁰ which showed the respondent state did not comply with the Court's judgment.

In the domestic discourse, it was heavily debated whether the UK should comply with the judgment of the ECtHR or not in the context of constitutional issues and the role of ECtHR. During his speech in the House of Commons Prime Minister David Cameron said: “prisoners would not get the vote under his government.”⁶¹ MPs Jeremy Corbyn and Tom Brake argued that the UK should not differentiate among rights of ECHR. According to Mr Brake, the

⁵⁵ Johnston N, *Prisoners' voting rights: developments since May 2015*, April 2, 2020

<https://commonslibrary.parliament.uk/research-briefings/cbp-7461/> accessed on 6 June 2020

⁵⁶ *Greens and M.T. v the United Kingdom*(Application no. 60041/08)

⁵⁷ *Greens and M.T. v. The United Kingdom* (Applications nos. 60041/08 and 60054/08) §115

⁵⁸ *Firth and others v. the United Kingdom* (Application no. 47784/09)

⁵⁹ *McHugh and Others v. the United Kingdom* (Application no. 51987/08)

⁶⁰ *Millbank and Others v. the United Kingdom* (Application no. 44473/14)

⁶¹ *Prisoners will not get vote despite European ruling, says David Cameron*-video.

<https://www.theguardian.com/politics/video/2012/oct/24/prisoners-vote-david-cameron-video> accessed on 25 May 2020

prohibition of prisoners' voting rights is "illogical" and this right should be considered as part of the process of rehabilitation.⁶²

Finally, on November 2, 2017, after 12 years, the United Kingdom made changes to the law. Despite the proposal made by Secretary of State for Justice, David Lidington was more limited in scope than earlier proposals it was welcomed by the Council of Europe. In this proposal, prisoners on Temporary Licence are allowed to vote.⁶³

On December 6, 2018, Committee of Ministers adopted a resolution regarding the execution of the judgments of the above-mentioned 5 cases against the United Kingdom. In the resolution, the Committee mentioned that the UK took administrative measures and complied with the judgments by providing just satisfaction and removing indiscriminate approach regarding prisoners' voting rights by providing the right to vote prisoners released on temporary licence and home detention curfew.⁶⁴

3.2. Italy

In 2013, Pilot judgment case of *Torreggiani and Others v. Italy*⁶⁵ on the prison, overcrowding was established by the ECtHR in which the Court found the violation of Article 3. The Court expressed that there were "structural deficiencies" which resulted in the systematic violation of prisoners' right and called on the State to take the necessary measures to prevent future systematic violations. Despite, *Sulejmanovic v. Italy* case established in 2009, the prison overcrowding problem was reviewed by the Court in which it found

⁶² *MPs reject prisoner votes plan*, 10 February 2011
<https://www.bbc.com/news/uk-politics-12409426>

⁶³ Johnston N, *Prisoners' voting rights; developments since May 2015*, 2 April 2020 P.4
<file:///C:/Users/Lenovo/Downloads/CBP-7461.pdf>

⁶⁴ *Resolution Execution of the judgments of the European Court of Human Rights Five cases against the United Kingdom* adopted by the Committee of Ministers on 6 December 2018 at the 1331st meeting of the Ministers' Deputies
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000016808feca9

⁶⁵ *Torreggiani and Others v. Italy* (Application No 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 et 37818/10)

“flagrantly insufficient amount of personal space available to Mr Sulejmanovic until April 2003 had in itself constituted inhuman or degrading treatment, in violation of Article 3.”⁶⁶ The measures taken by Italy was not satisfactory to remove the structural problems which resulted in triggering pilot judgment procedure against Italy.

On November 27 2013, 6 months after judgment Italy presented an “Action Plan” where indicated detailed measures to be implemented to overcome the structural deficiencies identified by the ECtHR. The Action Plan consisted of Legislative actions, which were considered to entail measures such as “reducing prison entry flows by decriminalizing minor crimes”, developing the “ access to community sanctions and measures” by assisting reintegration of offenders in the external community, as well as, presenting possible cancellation of sentence under the programme of supervised community and labour. Furthermore, building actions were to be planned “according to the present needs of prison estate”, more open prison regimes was considered to implement especially prisoners who were included to the "medium or low security measures" classification. Additionally, "preventive remedy" for possible infringement of article 3 of the Convention and “compensative remedy” for the victims were assessed.⁶⁷

On May 27, 2014, Italy submitted the Final Report where showed its compliance with the Action Plan. Considering taken measures by Italy, the Court declared inadmissible similar cases such as *Stella and others v. Italy*.⁶⁸

On March 8, 2016, at the 1250th Meeting of the Ministers’ Deputies, the Committee of Ministers adopted the resolution regarding the compliance of Italy with pilot judgment. The Committee examined the reports on individual and general measures provided by Italy.

⁶⁶ Council of Europe, European Court of Human Rights, Press release issued by the Registrar *Chamber Judgment Sulejmanovic v. Italy*, 16 July 2009 <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-2802468-3069791%22%5D%7D> accessed on 7 June, 2020

⁶⁷ Action report (20/11/2015)- *Communication from Italy concerning the case of Torreggiani and others against Italy* (Application No. 43517/09) at the 1243 meeting (8-10 December 2015) (DH)https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804ab52f

⁶⁸ Council of Europe European Court of Human Rights, *Litigants complaining about overcrowding in Italian prisons must use the new remedies introduced by the Italian State*, Press Release, ECHR 272 (2014) 25.09.2014

Considering major reforms committed by the government and continuation of the activity, the Committee of Ministers declared that Italy complied by the judgment and closed the examination.⁶⁹

3.3. Comparison of Azerbaijan with the UK and Italy

From May 14, 2014, Azerbaijan was chair of the Council of Europe for 6 months.⁷⁰ Imposing crackdown on some human rights defenders and civil activists happened during the chairmanship of Azerbaijan.

As it is apparent from the events the government of Azerbaijan is reluctant to remove obstacles for human rights defenders and comply fully with the judgments. Especially, because of economic and political reasons, it is hard to expel Azerbaijan from the Council of Europe. At least, the possibility of countries such as Russia, Turkey, Georgia or Ukraine to vote against Azerbaijan is highly probably.

As above-mentioned in the case of *Intigam Aliyev v. Azerbaijan*, the Court set out general measures which were slightly different from other similar judgments. However, the interpretation of general measures leads to two possible, quite opposite solutions. Azerbaijan either would need to pass real reforms and ensure the independence of the judiciary from the executive branch or would introduce legislation which provides for the independence of the judiciary in theory but not in practice. As experience shows in the UK case, Azerbaijan still could be accepted as a state which complies with judgments even if the second route is followed.⁷¹ It was shown in the *Greens and M.T v. the United Kingdom* that slightly changing

⁶⁹ Council of Europe Committee of Ministers, Resolution [CM/ResDH\(2016\)28](#), *Execution of the judgments of the European Court of Human Rights, Two cases against Italy* adopted by the Committee of Ministers on 8 March 2016 at the 1250th meeting of the Ministers' Deputies
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1a5b

⁷⁰ Council of Europe, *Austria hands over the chairmanship to Azerbaijan*,
<https://www.coe.int/en/web/portal/cm-chairmanshipazerbaijan#:~:text=Azerbaijan%20took%20over%20from%20Austria,months%20beginning%20on%2014%20May>. accessed on 5 June 2020

⁷¹ Dzehtsiarou K, *Is the European Court of Human Rights capable of changing legal systems? Judgment in Aliyev v. Azerbaijan*. October 25, 2018

the legislation the UK was able to close the examination in the Committee of Ministers. However, if the Courts set general measures which clearly defines requirements for Azerbaijan, then the possibility of Government to comply with judgments according to its "interest" would potentially decrease. For example, Ilgar Mamadov's release was possible after changing Article 76.3.1-1 of Criminal Code which provides the possibility for the conditional release of a person who committed a serious crime after serving of two-thirds of the term imprisonment.⁷² Despite he was acquitted, he lost his 5 years in imprisonment and participation at elections during this period.

The case of Torreggiani had a significant effect on Italy which resulted changing of domestic legislation regarding prison overcrowding. Identifying the measures in pilot judgment to remove structural problems in Italian domestic law by the Court forced Italy to solve the problem more effectively.⁷³ Taking Italy as an example and demanding concrete action plan from Azerbaijan within reasonable time which would provide the independence of judiciary and reforms in the NGOs sector and follow the development. To force Azerbaijan to comply fully with judgments it is important to systematically follow the government's action regarding human rights defenders and civic activists. Generally, the government gambles with the political prisoners, if any pressure by the international organizations or the states, the government tries to convince the international public that they make real reforms by releasing some part of prisoners. Mainly, a presidential pardon is used to release political prisoners.⁷⁴ As Assembly mentions mainly,

<https://strasbourgobservers.com/2018/10/25/is-the-european-court-of-human-rights-capable-of-changing-legal-systems-judgment-in-aliyev-v-azerbaijan/> accessed on 4 June 2020

⁷² Proceedings under Article 46§4 in the case of Ilgar Mammadov v. Azerbaijan (*Application no. 15172/13*), § 20

⁷³ Federica Favuzza, Torregiani and Prison Overcrowding in Italy, January 23, 2017. 173

⁷⁴ Azerbaijan: President Pardons Dozens of Political Prisoners, March 17, 2020

<https://freedomhouse.org/article/azerbaijan-president-pardons-dozens-political-prisoners> accessed on 4 June, 2020

“presidential pardons are often conditional on an apology, do not fully erase the effects of injustice and their extensive use casts doubt on the proper functioning of the criminal justice system.”⁷⁵

Taking the same approach to Azerbaijan as that of followed against the UK and closing the cases regarding Azerbaijan by half compliance would further deteriorate the situation of the human rights defenders. European Court of Human Rights should pay more attention to Azerbaijan’s compliance with the prescribed general measures. Taking into account the restricted environment and vulnerability of the members of civil society, it is less likely that human rights defenders and NGOs can flood the Court with the applications (partly due to the size of the group) as in case of Italy and the UK. Dealing with the current number of applications does not create a problem for Azerbaijan because of financial resources to pay for the violations and provide just satisfaction. It seems that with regards to payment of just satisfaction are available. The practice shows that as regards the payment of just satisfaction, Azerbaijan complies with judgments delivered by the Court. However, having to pay monetary compensation does not change the attitude of the government. As a result, the general situation of the human rights defenders remains the same, they face repetitive harassment.

⁷⁵ Council of Europe Parliamentary Assembly, *Reported cases of political prisoners in Azerbaijan*, Resolution 2322 (2020) <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28584&lang=en> accessed on 7 June 2020

Conclusion

Azerbaijan uses administrative discretion to harass human rights defenders and civil activists. Despite there are judgments delivered by the ECtHR regarding human rights defenders and civil activists, fully compliance with judgments by Azerbaijan is highly problematic. Mainly, Azerbaijan pays monetary compensation for just satisfaction, but it does not change its policy towards critics of the government. Repetitive harassment serves for "chilling effect" on the activity of human rights defenders and civil activists. What we advocate in the Capstone Project is to achieve full compliance and prevent further harassment of human rights defenders. To achieve a real positive result and remove structural problem non-acceptance of any compromise with the Azerbaijani Government regarding the implementation of the judgments is necessary. Because implementation of judgments based on the interest of the government does not result in continuous positive changes for the situation of human rights defenders. Furthermore, without solving a problem, the Court will receive similar applications from Azerbaijan. Therefore, it is important to put pressure on Azerbaijan for full compliance with judgments.

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[/asset_publisher/StEVosr24HJ2/content/council-of-europe-s-committee-of-ministers-launches-infringement-proceedings-against-azerbaijan?](https://www.coe.int/en/web/portal/news-2017/-/asset_publisher/StEVosr24HJ2/content/council-of-europe-s-committee-of-ministers-launches-infringement-proceedings-against-azerbaijan?) accessed on 3 May, 2020.

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Appendix- Recommendations to the Council of Europe regarding the possible sanctions for non-compliance with ECtHR judgments

Azerbaijani authorities are reluctant to safeguard human rights and adhere to the principle of rule of law. Independent human rights defenders prepare reports on violation of human rights and conduct advocacy on international level. These actions do not serve interests of Azerbaijan's government. Therefore, protection of human rights defenders and non-compliance with judgments should be prevented by effective measures, such as sanctions against Azerbaijan. I would like to suggest imposition of following sanctions:

- *Sport sanctions*

Azerbaijani Government uses sports events to improve its public image and distract society while abuse of human rights takes place.⁷⁶ Sports events such as European Games, Formula-1, UEFA etc. have been used for the creation of an image of a flourishing oil-rich country and prevention of international criticism targeting the authoritarian regime.⁷⁷ Boycotting of any sports events in Azerbaijan on the ground of human rights violations by European Countries could pressurize the government to change its policy of reluctance to take necessary measures.

- *Sanctioning Senior Government officials*

The Council of Europe can sanction those officials in the State apparatus whose job is to safeguard human rights and take necessary measures in case of violation. Moreover, the sanctions can also be imposed on the senior leadership of the government. The ban

⁷⁶ Christie C, *Human Rights abuses and the European Games in Azerbaijan*, 15 June 2015 https://www.vice.com/en_us/article/gv77m7/human-rights-abuses-and-the-european-games-in-azerbaijan accessed on June 7, 2020

⁷⁷ Williamson H, *Don't Be Fooled by Azerbaijan at Europa League Football Final*, 17 May 2019 <https://www.hrw.org/news/2019/05/17/dont-be-fooled-azerbaijan-europa-league-football-final> accessed on 7 June, 2020

on the entrance to European Countries, revoking their visa avoiding them in international conference and so on can be influential methods.

- *Deprivation of voting rights*

According to Article 3 of the Statute of the Council of Europe member states are required to "accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms...", and non-compliance with these principles can result with a suspension of state's rights of representation as it is stipulated in Article 8.⁷⁸ In 2018 it was revealed that some members of Council of Europe's Parliamentary Assembly were corrupted with "caviar diplomacy" by Azerbaijan to silence the discussion of human rights infringements.⁷⁹ However, Azerbaijan representation did not face serious consequences. Depriving Azerbaijan's voting rights in the Parliamentary Assembly of Council of Europe can be effective. It is important for Azerbaijan not to lose its voting rights due to Nagorno-Karabakh conflict. Negotiations over Nagorno-Karabakh are held between Azerbaijan and Armenia. Azerbaijan needs to have international support regarding its sovereignty and territorial integrity. If Azerbaijan loses its voting rights in the Parliamentary Assembly, it will also lose to have an opportunity to influence any resolutions regarding Nagorno-Karabakh.

- *Economic sanctions*

In a case, Azerbaijan does not stop prosecuting human rights defenders, harsher economic sanctions should be applied as a further step in coordination with the European Union. Considering that EU countries are largely involved in Azerbaijan's

⁷⁸ Council of Europe, *Statute of the Council of Europe*, London, 5, May, 1949
<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680935bd0>

⁷⁹ Minder R, *Council of Europe Urged to Act against Lawmakers Tied to Bribery*, 6 May, 2018
<https://www.nytimes.com/2018/05/06/world/europe/european-council-bribery-azerbaijan.html> accessed on 7 June, 2020

economy⁸⁰, sanctions of this kind will be an influential mechanism affecting government's policies.

- *Possibility of triggering Pilot Judgment Procedure*

One of the possible options for the European Court is to use a pilot judgment procedure against Azerbaijan. The Pilot judgment procedure was established by the Court to find a solution for the systematic or structural problems caused by the repetitive violations of the Convention by contracting parties.⁸¹ As harassment of human rights defenders and civil activists is an ongoing issue in Azerbaijan, very likely number of pending applications to the ECtHR will increase. Of course, it is up to the Court to decide whether it will start a pilot judgment procedure against Azerbaijan or not. Clearly defined timeframe and pressure concerning time-constraints will be a very effective mechanism, which will facilitate enforcement of the Court's judgement by Azerbaijan. In the pilot judgment, the Court can indicate the general measures and concrete actions that are required to put an end to the identified systemic violation of Conventional rights.

- *Increasing monetary compensation for just satisfaction or providing an alternative mechanism*

Due to the small number of civil society activists in Azerbaijan and therefore, relatively small number of applications in ECHR, triggering a Pilot judgment procedure might take a long time. Instead, the Court can increase monetary compensation as a just satisfaction which would create a burden for the government. Additionally, the Court can create a new mechanism for structural infringements of human rights.

⁸⁰ European Commission, *Countries and regions, Azerbaijan*
<https://ec.europa.eu/trade/policy/countries-and-regions/countries/azerbaijan/>

⁸¹ European Court of Human Rights, *The Pilot-Judgment Procedure*, Information note issued by the Registrar
https://www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf §4

- *Expelling Azerbaijan from the Council of Europe would not improve a situation*

As above-mentioned Article 46(4) of Convention was triggered for the first time against Azerbaijan in Mammadov's case, as a result applicant was released. However, expelling Azerbaijan from the Council of Europe will further deteriorate the situation. For the time given citizens and human rights defenders are able to seek remedy for violation of their rights via ECtHR.