

# Human Rights House Tbilisi

Observer's Narrative about the

Trial of Intigam Aliyev  
and  
Trial of Rasul Jafarov  
In Azerbaijan

*From pre-trial stage until the conclusion of the Supreme Court hearings<sup>1</sup>*



**HUMAN RIGHTS HOUSE  
TBILISI**

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**HUMAN RIGHTS HOUSE  
NETWORK**

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<sup>1</sup> This report is based on the materials of trials observation made by Human Rights House Tbilisi, as well as on the interviews conducted with the members of the family, colleagues, other NGO's and public activists.

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## Observer's Narrative about the Trial of Intigam Aliyev

### General information

#### 1. Summary

Intigam Aliyev was arrested on 8 August 2014 on charges of illegal business activity (Article 192.2 of the Criminal Code of Azerbaijan), tax evasion (Article 213.2.2) and abuse of office (Article 308). Charges of services forgery (Article 313) and misappropriation (Article 179.3) were added on 15 December 2014. Once convicted of these charges, on 24 of April 2015 Intigam Aliyev was sentenced to 7 and a half years of imprisonment and a three-year ban on holding a public office. Both the Appellate Court and the Supreme Court upheld the decision of the City Court.

The charges against Intigam Aliyev were fabricated. Two months before his detention, Aliyev gave a speech during June 2014 session of the Parliamentary Assembly of the Council of Europe (PACE), criticizing the Azerbaijani government's violations of its human rights obligations. He spoke about the problem of political prisoners, attacks on independent NGOs, arrests of government critics, and violations of property rights.

On 8 August 2014 Intigam Aliyev was summoned to the Prosecutor General's Office of Azerbaijan as a witness to the criminal case against a number of NGOs. The interrogation as a witness lasted for a short time, no more than 30 minutes, and the questions were mostly related to the applicant's biography and his family. The end of the interrogation and changing his status to "accused" took about 10 minutes. The applicant was informed about the decision to charge him with criminal offences in a one-page document. He was detained **in the absence of reasonable suspicion** that he had committed a criminal offence. No order or supporting documents were presented to him. **He was not promptly informed** about the grounds for his arrest. Further, **the meaning of the charges was not explained clearly to him** in spite of his request to have it explained. Moreover, the charges presented against him were applicable to a public servant or to an owner of a commercial enterprise, not relevant to his position in his NGO. His further detention could not be justified as a necessary measure. The state bodies failed to substantiate the necessity of his pre-trial detention.

During the hearings, Aliyev filed a motion in relation to his illegal pre-detention. He mentioned that for the hearing of 17 February 2014, it was already day 9 of his illegal detention as on 9 February the term of allowed pre-detention had expired, the procedural rules as such were violated.

The Prosecutor pointed to Article 306 of the Criminal Procedure Code of Azerbaijan<sup>2</sup> and claimed that

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<sup>2</sup> **Article 306. Decisions on matters connected with restrictive measures**

**306.06.1.** In addition to giving the decisions provided for in Article 300.1.1, 300.1.5 and 300.1.6 of this Code on the results of the preparatory hearing, the court shall give decisions on the following:

**306.1.1.** the grounds for applying a restrictive measure to the accused or not;

**306.1.2.** if a restrictive measure is adopted, the grounds for adopting that particular type of restrictive measure; **306.1.3.**

Maintaining, altering or annulling the restrictive measure applied to the accused. **306.2.** After announcing the decision to discontinue examination of the criminal case and return it to the Prosecutor in charge of the procedural aspects of the investigation, the court shall consider the question of extending the period of detention on remand of the accused in accordance with the provisions of this Code, under the following circumstances: **306.2.1.** if the period of detention on remand of the accused, as a restrictive measure adopted during the preliminary investigation, expires within 7 (seven) days of the decision to discontinue examination of the criminal case and return it to the Prosecutor in charge of the procedural aspects of the investigation; **306.2.2.** if the public Prosecutor in the criminal case applies to the court to extend the period of detention on remand of the accused.

Aliyev's detention was reasonable until the Court would come to the final decision. The Court failed to adequately verify the **lawfulness of pre-trial detention**.

An illegal search was conducted in the office of Aliyev by the investigator and other employees of the Grave Crimes Investigation Department of the Office of the Prosecutor General, witnesses were questioned, invited by the Prosecutor, as was Aliyev's lawyer, J. Javadov. All documents were taken in folders without making any individual note or list of documents. Several computers were also seized, two USBs and disks, again, without making any relevant note. By such illegal activities, Aliyev and his lawyers **were deprived of any opportunity to have adequate means for the preparation of his defense**.

Intigam Aliyev had **problems with access to the case materials** in the period of pre-trial and trial proceedings and, in reality, the question remains whether he had **adequate time for the legal consultations and preparation of his position** during pre-trial period.

The Defendant had the opportunity to defend himself in person and through the legal assistance of his own choosing. **He had no lawyer** during the first interrogation process in the Investigation Office.

**The requirement to hold public hearings were not always satisfied** either in the City Court or the Appellate Court. The unwillingness of the judges to use microphones made it difficult to understand the speeches. The motion concerning the request to turn on the microphones was not satisfied. Despite the fact that the hearings were formally open to the public, sometimes people who came to attend had to remain outside the courtroom due to the lack of benches, or had problems entering the courtroom. The sitting plan of the judges and the parties, and a large cage (covering part of the hall) did not give the chance for full observation.

The **transportation procedure** for the court hearings, with the Defendant handcuffed and then placed in the cage, broke the standards of appearance before the Court. In the First Instance Court, under the motions of his lawyers, Aliyev was removed from the cage and was allowed to sit next to his lawyers. While he was in the cage, he was restricted from having consultations with his lawyers when he needed.

**Confidentiality of communication** with the counsel was not provided. During the hearings in the First Instance Court, the Defendant and defense counsels could consult each other but the guards were at times positioned close to the bench of the party, as if to hear the conversations between lawyers and the Defendant.

**The transportation** to the court was made by special cars that were decidedly uncomfortable. Detention conditions in prison also raised concerns. **Aliyev's health was known to have been bad before his detention and yet while in prison he did not receive the necessary medical treatment**.

**Equality of arms** was not provided during the criminal case hearing in the court or prior to it. The Prosecutor had more privileges before the Court than the Defense. Most of the motions that Aliyev and his lawyers presented were not satisfied. Aliyev and his lawyers **were deprived of the adequate means for the preparation of defense**. During the hearings, the Court at times expressed their clear opinion that the criminal acts were carried out by Aliyev ("You speak as though you did not do it")<sup>3</sup>. The judges failed to explain why they rejected the motions filed by the Defense. The presumption of innocence was violated.

The Court **was not independent in making a decision and the lack of impartiality was apparent**. Materials that Intigam Aliyev and his counsels presented to the court as evidence were not considered and the judges issued the final verdict by only referring to the indictment. The testimonies given by the so called "victims" gave a great deal of contradicting information, but the Court did not analyze them as required.

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<sup>3</sup> (The translator said that the court indicated that Aliyev was sure in admitting guilt regarding the accused crimes).

On 28 March 2016 Intigam Aliyev was released from prison with the conditional sentence of 5 years.

## **2. About Intigam Aliyev**

Intigam Aliyev is a leading human rights lawyer in Azerbaijan, who was one of the first from his profession to litigate cases in the European Court of Human Rights. Aliyev has also cooperated with international organizations.

Head of the public interest association, Legal Education Society, Intigam Aliyev has been involved in human rights advocacy for nearly 20 years. As a lawyer, he has filed over 300 complaints to the European Court of Human Rights. Of these, 23 cases have been successfully completed. Aliyev has taught courses on civil procedure, non-commercial law and the international mechanisms of human rights at local universities. He is an expert on human rights issues of several international organizations (OSCE, Council of Europe, GIZ, etc.) and has authored over twenty books.

In 2012 he was awarded the Homo Hominy Award for his work on human rights. In October 2014, Aliyev was awarded the Andrei Sakharov Freedom Award of the Norwegian Helsinki Committee together with Leyla Yunus, Rasul Jafarov and other political prisoners in Azerbaijan.

On 4 March 2013, he was given an award by People in Need, a human rights organization.

Aliyev has sent more than 40 complaints to the European Court of Human Rights in connection with the parliamentary elections of 2010; currently there are communications taking place with the government regarding the same complaints.

In addition to cases concerning the elections, Aliyev has also submitted complaints to the European Court concerning violation of property rights, freedom of expression, and the right to assembly. It should also be noted that, to date, the majority of the decisions issued by the European Court against the Azerbaijani government have been in cases litigated by Aliyev.

During his speech at 2014 summer session event of the Parliamentary Assembly of the Council of Europe, Aliyev harshly criticized the government's policy on human rights, and spoke on the problem of political prisoners, attacks on independent NGOs, arrests of government critics based on false charges, massive violations of property rights of citizens, and other such topics.

In October 2015, the Human Rights Award of the International Bar Association for Outstanding Contribution to Human Rights was given to him. Since he was in jail, the award was received by his children.

In February 2016, he won the Human Rights Award of the Council of Bars and Law Societies of Europe (CCBE), for devoting "his life to protecting the rights of individuals against the repressive system of the Azerbaijani government" and providing for decades "legal assistance and representation to the politically persecuted." Since he was in jail, the award was received by his children.

## **3. Facts of the case**

On 13 May 2014, the Prosecutor General's Office initiated a criminal case against a number of domestic and international NGOs as well as heads of NGOs. The proceedings were initiated pursuant to Article 308.1 (abuse of power) and 313 (services forgery) of the Criminal Code of Azerbaijan (the alleged reasoning behind launching investigation was "irregularities found in the activities of a number of NGOs of the Azerbaijan

Republic and branches or representative offices of foreign NGOs”).

Intigam Aliyev was summoned on 8 August 2014 to the Prosecutor General’s Office of Azerbaijan as a witness to the criminal case against a number of NGOs. The interrogation as a witness lasted for a short time, no more than 30 minutes, and the questions were mostly related to the applicant’s biography and his family. The minutes of the interrogation take up one and a half pages which contain introductory information about the applicant.

The end of the interrogation and changing his status to “accused” took only 10 minutes. The applicant was informed of the decision to charge him with criminal offences in a one-page document. He was not informed about the nature or reason for charges against him, despite his repeated requests.

Immediately after being charged he was taken to the office of his organization, which was searched. Police searched his office and confiscated equipment such as laptops and reports containing information on his work as a human rights defender. After the search was finished, he was taken to the Nazimi District Court.

The Nazimi District Court in Baku ordered the three-month pre-trial detention of Aliyev. The Court indicated the existence of grounds to assume that he may hide from the prosecuting authority and Court, illegally influence parties in the criminal proceedings, interfere with the course of pre-trial investigation and court proceedings; fail to comply with summons issued by the prosecuting authority or otherwise evade criminal responsibility or punishment.

On 11 August 2014, Intigam Aliyev lodged a complaint with the Baku Appellate Court. The Court upheld the decision of the Nazimi District Court on 13 August 2014. Aliyev stated that there was no explanation as to the grounds of the charges. He was not afforded sufficient time or means to prepare his defense, that the motion for pre-trial detention as a restrictive measure and the documents attached to it were not submitted to the defense prior to the court hearings; that despite his and his lawyer’s demands and requests, he did not have an opportunity to meet in private with his defense lawyer. In all those court hearings, the applicant raised motions in relation to alternative custody arrangements, such as house arrest or release on bail. These motions were ignored by the Court.

On 8 September 2014, Aliyev lodged before the Nizami District Court another motion: to change the restrictive measure of pre-trial detention to house arrest or release on bail. The motion was dismissed as unsubstantiated on 12 September 2014. The Court formally repeated the grounds of pre-trial detention but failed to examine the arguments of Aliyev. By the decision of the Court there was no ground for changing the restrictive measure. Aliyev filed a complaint before the Appellate Court. On 28 August 2014 the complaint was denied.

One month prior to his arrest, a tax audit was conducted at Aliyev’s office and he was accused of tax evasion. However, no violations were discovered.

- *Search in the office*

The search was conducted in the office in Aliyev’s presence and with participation of an investigator and other employees of the Grave Crimes Investigation Department of the Prosecutor General’s Office, attesting witnesses, invited by the Prosecutor, and Aliyev’s lawyer, J. Javadov. The Accused, Aliyev, learnt that the decision of the Nizami District Court to search his office was made on 7 of August, 2014 - one day before his questioning as a witness. During the search Aliyev voluntarily submitted all necessary items to the investigation authority, allowing them to conduct a search in all rooms and access all documents, including those kept in the safes. The representatives of the Investigative Office seized all financial documents found in the office - contracts, invoices, bank receipts, salary tables, tax reports, social security information and more, including documents belonging to the organization (charter, state registration, original documents confirming

state registration, approvals by solicitors). All documents were taken in folders without making any individual note or list of documents. Several computers were seized, two USBs and disks, again without making any relevant notes. Aliyev asked them to follow protocol. The Prosecutor refused to make any official note because of the quantity of materials. He said that they would need a few days to make it, but at the same time they were limited in time, so the case must be taken to Court as soon as possible.

Aliyev made a remark during the act of seizure about non-compliance with the legally required procedure during the seizure. The door of the office was locked and sealed off.

- *Search in Intigam Aliyev's flat*

On 8 August 2014 a search was also carried out in the flat where Aliyev was factually residing, as well as the flat of his mother and brother. The applicant was officially registered in the latter flat. The Investigative Authority seized all documents, computers, notebooks, USB cards and other electronic data storage devices found in both flats, including the computers which were used by his son and daughter, as well those owned by the children of his brother.

Like the search in his office, nothing was declared. Aliyev did not participate in this search.

- *The second search in his office*

On 9 August a second search was made in his office and all documents relating to the European Court cases were seized (approximately 200 cases). The files were taken to the Investigation Office even though the charges against Aliyev had nothing to do with the cases he had sent to Strasbourg.

Further, all medical documents concerning Aliyev's health, relevant prescriptions were also taken. In absence of medical information, the family was limited in buying the needed medicine for Aliyev later.

#### **4. City Court Instance**

The pre-trial period ended in December 2014. The court hearings started in late January and finished in April 2015 (the hearings took place on 23 January, 3 February, 17 February, 3 March, 10 March, 17 March, 31 March, 7 April, 14 April, 21 April and 22 April).

The hearings were held in Baku by the Grave Crimes Court. The presiding judge was Rasim Sadikhov, other judges were Avhan Haliyev, Fikrat Garibov; the Prosecutor – Farid Nagiyev. The Defendant was represented by lawyers Shahla Humbatova, Javad Javadov, Fahrudin Mehdiev and Elchin Sadikov.

By the official version of the Prosecutor, Aliyev unlawfully used grant money provided by donors, abused the requirements of law and started illegal entrepreneurship. The resulting damage was about 19,000 Azeri Manats as a result of illegal business activity and state tax avoidance.

On 22 April 2015, the Baku Grave Crimes Court sentenced Intigam Aliyev to seven and a half years imprisonment on unfounded charges of "tax evasion," "abuse of authority," "illegal business activity," "services forgery" and "misappropriation".

#### **Baku Appellate Court**

On 21 July 2015, hearings were held in Baku Appellate Court, Azerbaijan. The case was concluded in one day. The Court hearing lasted for 2 hours. The Collegium was composed of three judges, chaired by Judge Mirzali

Abbasov (Presiding Judge), Ilgar Murguzov, and Gadim Babayev. The Defendant was represented by lawyers: Javad Javadov, Elchin Sadigov, Shahla Humbatova, Fakhraddin Mehdiyev, and Anar Gasimov.

The victims were not present in the Appellate Court.

### **Supreme Court**

The hearings took place on 26 January 2016 and 24 February 2016. The hearings were conducted by a collegium of three judges chaired by Judge Gyuzal Rzaeva, with Fakhid Karymov, and Imran Gadjigaybov. The Defendant was represented by lawyer Javad Javadov (lawyer of his choosing). Intigam Aliyev did not appear in court on his own decision. He considered that the hearings were mere formalities.

Decision as to the cassation appeal was made on 24 February 2016. After 20-minute deliberation, the presiding judge declared that the Appeal Court decision would remain in force.

### **Medical treatment/Prison conditions**

Intigam Aliyev had problems with his health before his detention. From the beginning of his detention, Aliyev's health severely deteriorated. Members of his family who visited him on 7 November 2014 reported that after two hours he was neither able to talk nor to stand up.

At times he was not able to meet with his lawyer. Javad Javadov visited him and saw that he was in serious need of medical examination and treatment. Pains in his back were present even before his arrest, but then he was able to receive physiotherapy. In prison there were no conditions for such treatment. Intigam Aliyev was not even given an X-ray examination.

### **Support from the society**

Along with other human rights defenders, Aliyev was jailed in mid-2014 as part of the nationwide crackdown. Aliyev's arrest is widely considered to be politically motivated.

Numerous international governmental and non-governmental organizations, including Human Rights Watch, Amnesty International, the Open Society Institute, Human Rights House Network, International Bar Association, the European Union, Council of Europe have expressed their deep concern regarding Intigam Aliyev's detention. A number of international and local organizations, including observers and representatives from Kazakhstan Human Rights Organization, Human Rights House Tbilisi, the US Embassy, the German Embassy, and the EU were present in the courtroom alongside private individuals throughout the hearings of Aliyev.

Hearings were covered by mass media (including Meydan TV, Radio Liberty, Azadliq newspaper, Turan information agency and others).

### **Communication with the members of his family/outside prison**

- *Communication with members of his family*



- The members of Aliyev's family were able to visit him.<sup>4</sup>
- *Communication with the outside world*

Intigam Aliyev many times addressed the Court with information that his correspondence was exposed to strict viewing and censorship.

## 5. Relevant law

### Criminal Code of Azerbaijan

#### Article 192. Illegal business activity

**192.1.** Implementation of business activity without registration as ordered by the legislation of the Azerbaijan Republic, or without special sanction (license) in cases when such sanction (license) is mandatory, or with infringement of conditions of licensing, which results in damage to citizens, organizations or state of a significant amount, as well as committed with extraction of income to a significant amount – is punishable with a penalty at a rate from one up to five thousand the nominal financial unit, or restriction of freedom for a term of up to two years, or imprisonment for the term of approximately six months.

**192.2.** The same act committed: **192.2.1.** with extraction of income of a large amount; **192.2.2.** by an organized group – is punishable with restriction of freedom for a term of up to three years or imprisonment for a term of up to five years.

#### Article 213. Evasion from payment of taxes

**213.1.** Evasion of a physical person from payment of taxes or other obligatory payments, of a significant amount, by not presenting declarations on incomes when submission of the declaration is required by the legislation of the Azerbaijan Republic, or by inclusion in the declaration of obviously incorrect data regarding incomes or charges, or in any other way – is punishable with a penalty at a rate from one up to two thousand the nominal financial unit or with corrective works for a term of up to one year.

#### Article 308. Abusing official power

**308.1.** The deliberate abuse of official powers contrary to the interests of service, or the use by an official of service powers out of self-interest or other personal interest, causing essential harm to the rights and legitimate interests of citizens or organizations or interests of a society or state protected by law – is punishable with a penalty at a rate from one up to two thousand the nominal financial unit, or with deprivation of the right to hold certain public offices or to engage in certain activities for a term of up to three years, corrective works for a term of up to two years, or imprisonment for a term of up to three years.

**308.2.** The act provided by Article 308.1 of the present Code, entailing heavy consequences – is punishable with imprisonment for a term from three to seven years with deprivation of the right to hold certain public offices or to engage in certain activities for a term of up to three years.

*Note: 1. Officials in articles of the present chapter shall be persons constantly, temporarily or in special power carrying out the functions of an authority representative either carrying out organizational - administrative or administrative functions in state bodies, institutions of local government, state and municipal establishments,*

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<sup>4</sup> The question in relation to maintaining minimum standards of meetings with relatives may be raised separately.

*enterprises or organizations, and also in other commercial and noncommercial organizations. 2. Civil servants and employees of institutions of local government who are not admitted as officials, and also employees of other commercial and noncommercial organizations carry criminal liability under articles of the present chapter in*

#### **Article 179. Assignment or waste**

**179.1.** Assignment or waste, is plunder of property entrusted to guilty by another person – is punished by the penalty at a rate from hundred up to five hundred of nominal financial unit, or public works for the term from hundred eighty up to two hundred forty hours, or imprisonment for the term up to two years.

**179.2.** The same acts committed:

**179.2.1.** On preliminary arrangement by group of persons;

**179.2.2.** Repeatedly;

**179.2.3.** By person with use of service position;

**179.2.4.** With causing of damage in significant size – is punished by the penalty at a rate from two up to three thousand of nominal financial unit or imprisonment for the term from three up to seven years with confiscation of property or without it.

**179.3.** The acts, provided by articles 179.1 or 179.2 of the present Code, committed:

**179.3.1.** By organized group;

**179.3.2.** In large size;

**179.3.3.** By person, who has been convicted earlier two or more times for plunder or extortion – is punished by imprisonment for the term from seven up to twelve years with confiscation of property or without

#### **Article 313. Service forgery**

Service forgery, that is bringing by an official, civil servant or employee of an institution of local government who is not an official, to an official documents of obviously false data, as well as entering into specified documents of the corrections deforming their valid contents, committed from mercenary or other personal interest – is punishable with a penalty at a rate from five hundred up to one thousand the nominal financial unit, community service for a term of up to two hundred forty hours, or corrective works for a term from one to two years, or with imprisonment for a term of up to two years with deprivation of the right to hold certain public offices or to engage in certain activities for a term of up to two years or without it.

## **II. Criminal proceedings**

### **1. Detention, pre-trial period**

Intigam Aliyev was detained in the absence of reasonable suspicion that he had committed a criminal offence. The Prosecutor's Office invited him for questioning as a witness and the interrogation took a sudden twist. The investigation authorities detained detailed Aliyev without real evidence of his guilt. He was not informed about the nature and reason for the charges against him, despite his repeated requests. No relevant materials were shown to him. He was not promptly informed about the grounds of his arrest. The procedure of changing his status from "a witness" into "accused" took just 10 minutes.

Further, the Court failed to examine all the facts arguing for or against justifying the necessity of his detention. The Court decision repeated the position of the Prosecutor and no more. The motivation of the Court cannot be considered as verification of the lawfulness of the detention.

The pre-trial detention was (by the decision of the Court) for three months. The Defense filed a motion to replace the pre-trial detention with house arrest or bail but the Court refused to satisfy this motion.<sup>5</sup> Also, Aliyev's pre-trial period of detention was prolonged for further three months.

Moreover, during the next hearings, Aliyev filed a petition in relation to the illegal prolonged pre-detention. He stated that the hearing of 17 February was already 9 days into his illegal detention, as on 9 February the term of allowed detention had expired, hence the procedural rules had been violated.

The Prosecutor applied Article 306 of the Criminal Procedure Code (CPC) of Azerbaijan<sup>6</sup> and claimed that Aliyev's detention was reasonable until the Court came to final decision. He also suggested that Aliyev's long petitions were prolonging the process and that this was the reason the case was still unfinished. Aliyev's appeal against the illegality of pre-trial detention was rejected by the court, after 5-minute deliberation.

## Relevant law / Criminal Procedure Code of Azerbaijan

### Article 163. House arrest

**163.1.** House arrest is a restrictive measure which restricts a person's liberties and other rights by a court decision, without the accused being detained on remand and isolated completely from society.

**163.2.** The choice of house arrest as a restrictive measure may be considered only at the request of the defense instead of the decision taken for the person's arrest.

**163.3.** House arrest may be accompanied by application of the following measures, separately or where possible jointly:

**163.3.1.** Prohibition of leaving one's home at any time or at certain times;

**163.3.2.** Prohibition of speaking on the telephone, sending mail or using other means of communication;

**163.3.3.** Prohibition of contact with certain people and of receiving visits from anyone at home;

**163.3.4.** Application of electronic monitoring devices and obligation to wear them and operate them;

**163.3.5.** obligation to answer supervisory telephone calls or other monitoring signals, to telephone the preliminary investigating authority or other authority monitoring the behavior of the accused at fixed times, or to attend personally;

**163.3.6.** the placing under observation the accused or his home, as well as a police guard on his house, flat or other accommodation given to him;

**163.3.7.** Other measures which ensure the required behavior and partial isolation of the accused.

**163.4.** The rules governing decisions about house arrest, its duration and prolongation and release from house arrest shall be regulated by the provisions of this Code on arrest as a restrictive measure.

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<sup>5</sup> Article 164 of CPC of Azerbaijan prevents granting bail to persons charged with a "serious crime" meaning the legislative system has an automatic mechanism to prevent bail.

<sup>6</sup> **Article 306. Decisions on matters connected with restrictive measures**

**306.06.1.** In addition to giving the decisions provided for in Article 300.1.1, 300.1.5 and 300.1.6 of this Code on the results of the preparatory hearing, the court shall give decisions on the following: **306.1.1. the grounds for applying a restrictive measure to the accused or not; 306.1.2.** if a restrictive measure is adopted, the grounds for adopting that particular type of restrictive measure; **306.1.3.** maintaining, altering or annulling the restrictive measure applied to the accused. **306.2.** After announcing the decision to discontinue examination of the criminal case and return it to the Prosecutor in charge of the procedural aspects of the investigation, the court shall consider the question of extending the period of detention on remand of the accused in accordance with the provisions of this Code, under the following circumstances: **306.2.1.** if the period of detention on remand of the accused, as a restrictive measure adopted during the preliminary investigation, expires within 7 (seven) days of the decision to discontinue examination of the criminal case and return it to the Prosecutor in charge of the procedural aspects of the investigation; **306.2.2.** if the public Prosecutor in the criminal case applies to the court to extend the period of detention on remand of the accused.

**163.5.** When a court decides whether to release an accused person from detention on remand, it shall decide whether or not to order house arrest as a restrictive measure. Complaints or appeals against the court decision to apply house arrest as a restrictive measure may be made to the Appellate Court. If the Prosecutor in charge of the procedural aspects of the investigation does not agree with the decision:

**163.5.1.** The court decision on house arrest as a restrictive measure shall become final only after confirmation by the Appellate Court;

**163.5.2.** Before the legality and grounds of this decision are examined by the Appellate Court, the decision on arrest as a restrictive measure taken by the Court of First Instance shall remain in force until the matter of house arrest is decided.

**163.6** Application of house arrest as a restrictive measure may be discontinued if so decided by the investigator or the Prosecutor in charge of the procedural aspects of the investigation in the circumstances provided for in Article 157.8 of this Code.

## **2. City Court instance**

### **2.1. Court room and the sitting plan of the parties**

The hall was small (4 meters wide, 17-19 meters long). The room was adequately lit. The walls and chairs were old. Chairs for the public could accommodate maximum 30 persons. The benches were not comfortable. A quarter of the hall was occupied by a cage for the Accused.

At the end of the hall (opposite the entrance) was the desk of the Court. The cage covered some space where the Court Collegium and the Court Secretary were seated. Depending on where an observer sat, in most cases it was easier to hear the voice of the Presiding Judge than to see him.

The procedures of interrogation of the victims/ witnesses or any party took place in the space between the cage and judges' table, making it difficult for observation. The cage also blocked the view of the Court Secretary.

The lawyers and Prosecutor were not seated face to face and the Prosecutor was closer to the Judge. The tables and chairs for the Accused and his lawyers were placed at the opposite side. Whenever the Defense and Defendant wanted to speak, they needed to turn around.

The public were placed too far away to observe the process fully, with both visual and hearing obstacles. The unwillingness of the judges to use the microphones made it difficult to understand the speeches.

The room was served by three kinds of guards dressed in three different uniforms. The guards watched the people sitting in the courtroom, and moved freely around the room.

### **2.2. Procedure of transportation to court**

The transportation was made using special vans which were uncomfortable. Intigam Aliyev filed a motion about the bad conditions during his transportation to the court (hearing of 3 February 2015) and asked for a change of van.

He claimed that his transportation to court was in a van "like an iron coffin," so uncomfortable that after arrival, he needed to rest.

After deliberation of this matter, the Court decided to appeal to the penal system regarding changing the van.

This problem was partly solved. The next stages the lawyers did not raise that question again.

### 2.3. Presumption of innocence

#### - *Remaining in/out of the cage*

On the grounds of a motion from Aliyev's lawyers (during the hearing of 3 February 2015) to let Intigam Aliyev out of the cage, and after deliberation, the Court announced that the motion would be satisfied and Intigam was allowed to sit next to his lawyers throughout all court hearings.

This motion had also been lodged during previous hearings, but had not been discussed the same day.

#### - *The behavior /claims of the Court*

During the hearings, the Court sometimes expressed the opinion that the acts had genuinely been carried out by Aliyev ("You speak as though did not do it")<sup>7</sup>.

During the hearings, the Judge periodically tried to interrupt Aliyev during the course of his statement by repeatedly arguing various positions. Aliyev protested this behavior many times.

Sometimes the Judge himself avoided some questions made by the defense as ungrounded. All these questions were in full connection to the case (during the majority of hearings).

Intigam also appealed the fact that the Presiding Judge called him "Aliyev Intigam," and asked him to refer to him as "Intigam Aliyev" as he found it disrespectful.

### 2.4. Public Hearings

Although the hearings were open to the public, at times people were unable to enter the courtroom due to the lack of seating.

At the same time the lack of microphones made it difficult to observe the process. A repeated motion requesting that the microphones be turned on went unsatisfied. Also, the location of the cage, blocking part of the hall, made it difficult to observe the judges and the parties.

Before proceedings, visitors were checked by the guards; men were checked by male guards and women by female court personnel. First, the members of the Defendant's family and representatives of diplomatic and international missions were allowed to enter the court building. Later, other females and then the remaining men. During this procedure every visitor was checked personally, by hand, including handbags. Mobile phones and IDs had to be left outside the courtroom. In some cases visitors were asked to leave their bags also. Mobiles and other personal items were returned after the proceedings.

There was no space in the room for additional interested parties to attend and these had to stand outside - at the entrance on the sidewalk. The sidewalk is small, just a meter in width.

#### - *Motion to close the hearing*<sup>8</sup>

The victims' lawyer applied to the Court with a motion concerning the closing of the hearings during questioning of the victims (the hearings of 3 February and 17 February 2014). The Prosecutor and the Defense did not agree with this motion. After the deliberation the motion was not satisfied by the Court.

#### - *Aliyev's petitions to change the court room for a bigger one*

The first hearings of the case took place in another courtroom. This courtroom was not big, and there was problem with the lack of seating. The Defense filed a successful motion to change the courtroom for another, and the next hearing (3 February 2015) took place in the abovementioned courtroom.

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<sup>7</sup> (The translator said that the Court spoke as if he was sure of the guilt for the accused's crimes).

<sup>8</sup> Materials of monitoring, dated by 3 February 2015; 17 February 2015

Later(during the proceedings of 3 February and afterwards) Aliyev asked the Court to change the courtroom again to a bigger one and noted that the same limited amount of benches and small space went against the standards of publicness and openness of process, depriving the public a free presence and preventing the possibility of public supervision.

This motion was not satisfied as, according to the Court, there was no possibility to change the hall. Further, by the explanations of the judge, the legislation of Azerbaijan does not allow for monitoring of processes and therefore the Court could not provide it.

The Prosecutor mentioned that if such an opportunity became available for the Court, of course a bigger hall has to be provided, however, he did not consider it as a disturbance to the publicity of the meeting.

During the trial period the hearings took place in the abovementioned courtroom.

Thus, despite the fact that the hearings were open to the public, publicity was not provided in full, in compliance with international standards.

- *Recording of court sessions/minutes of the hearings*

Under the common rule in Azerbaijan courts, audio-video recordings are not made during hearings, yet it may be permitted by the Court in response to the motions of the parties. Only minutes are provided by the Court Secretary. The cage made it impossible to visualize how the Court Secretary was working, but at times she was seen to be absent during the hearings.

Aliyev and his lawyers repeatedly filed motions in relation to the quality of the minutes.<sup>9</sup> First, they asked to allow video-audio recording of the hearing for the better documentation of the hearings- this was denied by the Court. Further, they asked to prepare the minutes of the hearings accurately. After that the judges asked the Court Secretary to work with greater attention.

Aliyev also pointed out that as their attempt to get the minutes of the hearings had not met with success<sup>10</sup>, they had not received copies of the minutes of those hearings that had already taken place. The Defense applied in writing and the Court answered that they would have this protocol at the end of the proceedings in the first instance, according to the Criminal Procedural Code.<sup>11</sup> They did not have a copy of protocol for all periods of the hearings in Nizami District Court.

## 2.5. Court impartiality/Equality of arms

- *Location of the parties*

The location of the parties, the fact that the Prosecutor was seated close to the judges and the fact that the parties didn't sit *vis-à-vis*; next to the Prosecutor were the Defense lawyers and Defendant; then the victims in line – went against the standard of visual equality of the parties.

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<sup>9</sup> Materials of monitoring, dated 3 February 2015 and afterwards.

<sup>10</sup> Materials of monitoring, 3 March 2015

<sup>11</sup> **Article 91.5.22.** to take cognizance of the case file from the end of the investigation or the discontinuation of the criminal proceedings and to make copies of the necessary documents relating to it; **Article 219. The end of the investigation 219.1.** The investigation shall end when it is decided to send the case to court so that the indictment may be drawn up and compulsory measures of a medical nature may be taken, or when it is decided to discontinue the criminal proceedings. **219.2.** In criminal cases subject to compulsory investigation, after the performance of investigative procedures which cannot be delayed and in any case within 10 (ten) days of the commencement of criminal proceedings, the preliminary investigator shall transfer the criminal case to the investigator under the terms of the relevant decision. A copy of this decision shall be sent within 24 hours to the Prosecutor in charge of the procedural aspects of the investigation. The accused, his legal representative and defense counsel and the victim, civil party, defendant to the civil claim and their representatives who have participated in the initial investigative procedures shall be informed that the case has been transferred to the investigator.

- *Collegium of judges*

The Collegium of judges opened every hearing by presenting the names of the judges and the parties and explaining the procedural rights of the Defendant and other actors of the process. They were led by the President of the Collegium while the two remaining judges had passive roles during the process, in most cases either slumped in their chairs or looking disinterestedly elsewhere.

Most of the Defendant's motions were denied. The deliberation of the majority of the motions was postponed for the following hearings. Judges in most cases gave no explanation as to why they had rejected the motions, which **raises concerns**.

At times, in the process of consideration of the arguments and motions, scornful intonation or unfavorable behavior was felt.

During some hearings the Presiding Judge was very aggressive, interrupting the Defendant and his lawyers. During others, the Judge periodically interfered with the dialogue of the Defense and the witnesses. Once, Aliyev addressed the Judge, having told him that his behavior could be likened more to that of a lawyer, rather than that of a judge. He called the actions of the Judge an intervention in due process. "A judge's purpose is to carry out interrogation, and not interrupt it," Aliyev said.<sup>12</sup>

Some hearings, due to such controversy, were stopped and postponed (the hearings when the victims were questioned, for example).

In every case, the Judge tried to participate actively throughout the process, sometimes keeping a friendly tone, sometimes being aggressive. During the hearings dated 7 April 2014, Aliyev's arguments and explanations caused no objections from the Judge or Prosecutor. Both were friendly. For example, the Judge, at a request from Aliyev not to interrupt, answered Aliyev's "do not violate my rights" with a kind tone.

***Motions of the Defendant and his counsel***

- *Hearing of 3 February 2015*

From the motions submitted, the only one satisfied was the motion regarding the withdrawal of Intigam Aliyev's lawyers from the list of witnesses (3 of 7 lawyers were put by the Prosecutor in the list of witnesses).

The remaining motions were:

- To allow a video-audio recording (the Court refused, but asked the Court Secretary to work with greater attention).
- Use of a microphone for better audibility in the courtroom;
- Withdrawal of information from the Ministry of Justice on the registered grants;
- Reclamations of information on bank accounts of the sister of the accountant (to know more about the transactions made by the owner of the bank).
- Alternative forensic examinations of the signature on corresponding originals of business documents by independent foreign bureaus (the consent to carry out examinations had already been received);
- Changing the measure of restraint from arrest to house arrest, guarantee or bail;
- Finding the act of searching Aliyev's office as unacceptable evidence due to many procedural violations;

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<sup>12</sup> Materials of monitoring dated 14 April 2015

- Returning financial declarations, personal papers, accessories, health certificates, etc. which were taken during the search of the office;
- Removal of a seal from the doors of the office allowing the office to work;
- Intigam Aliyev addressed the Court with information that his correspondence had been exposed to strict viewing and censorship and he had been deprived of contact with the public and family members. He petitioned for removal of such control and restrictions and asked for normal communication to be allowed;
- Clarification of the identity of employees carrying out the inspection of the signature of Aliyev on financial papers in the bank and the interrogation of said persons;
- An information request about the transfers which had been carried out by Aliyev over the last 5 years

**All the above motions were rejected or left without consideration until the following stages of the trial.**

*Hearing of 17 February 2015*

- Motion about pro-longed pre-trial detention against the legal limit, Intigam Aliyev requested that the pre-trial detention be annulled;
- Motion in relation to the removal of the Collegium of judges;
- Motion to change the courtroom for a bigger one. The Prosecutor agreed that if it was possible, a larger room should be provided;
- Motion to have the charges against Aliyev explained. He was accused of such crimes which belong to the activity of a commercial organization, while he worked in a non-commercial organization. He claimed he was not engaged in illegal business activity. He was engaged in human rights protection, education, trainings, and sending applications to the European Court. He said he was an activist, not a businessman.

**The above motions were denied, with exception to the explanation of the charges against Aliyev.**

The Court agreed that in further process they would try to explain charges better.

- *Hearing of 3 March 2015*

- Motion to file the books published by the organization with the case materials;
- Motion to hand over the computer for a survey of its postal addresses as court evidence.

The Judge denied the above motions, suggesting that the lawyers could gather all the documents from Aliyev's mailbox themselves.

- *Hearing of 10 March 2015*

The Defense filed the following motions:

- Motion to replace the measure of pre-trial detention of Intigam Aliyev with house arrest. This motion was supported by a letter from journalists and a number of NGOs. The Collegium retired for a three-minute deliberation before rejecting the motion;
- Motion to return financial declarations, personal papers and accessories which had been taken during the search of the office. There was important evidence for the protection of Aliyev in these documents. The judges requested the list of said documents, claiming they had no such list. When the lawyer tried to list documents orally, the Judge demanded a written list. Aliyev claimed that the search of the organization's office had been unacceptable, pointing to the violation of procedural rules when carrying out the search. The officials had not even recorded the minutes of the documents which were sequestered;
- Motion to withdraw information from the Ministry of Justice about the registered grants;



-Motion to request the bank statements of the accountant's sister in order to provide information about the transfers (incoming and outgoing, and the organizations that sent money, including transfer periods). The Defense said that there were other transfers on this account as well.

The Prosecutor demanded these motions be denied as they had the right to hold all necessary documents in the Prosecutor's Office during investigation. **The Judge denied Aliyev's motions.**

- Hearing of 7 April 2015

-Motion of the Prosecutor for the return of witnesses to the list of witnesses. The Court satisfied this petition;

-Aliyev's motion for interrogation of the employee of the International Bank; the Prosecutor was against this motion but the Court satisfied it;

Victim Sadig Bagirov motioned to carry out examination of any signature on payment orders;

Aliyev reminded the Court about the motion in relation to carrying out an examination of signatures on payment orders.

**The Court rejected both petitions about alternative examination, reiterating that the examination had already been carried out.**

- Hearing of 14 April 2015

- Shahla Humbatova spoke about the evidence withdrawn through the internet and presented to the Court and certified by the Ministry of Justice of Georgia, and asked that this be taken into account;

- Motion to enclose the grant agreements (of 2009 – 2010) and letters of guarantee of donors on performance of obligations on the project (from Embassy of the Czech Republic, Netherlands, Human Rights House Foundation, OSI) to the case materials. The Court added said documents to the list of materials;

- Motion about reception the sample of Aliyev's signature from the case. The Court denied.

- Motion to have possibility to prepare his last speech at the court in writing, as the prison authorities were taking away his writings from him. The Judge satisfied this request.

### 2.5.1. Victims and witnesses/Interrogation procedure<sup>13</sup>

A number of victims and witnesses were presented for the case. *Victims:* Avsana Orujova, Gulshan Orujova, Sadig Bagirov. *Witnesses:* Guliyanar Nabibova (new accountant in the organization) and an employee of the International Bank.

#### *-Interrogation procedure of witness/victim*

At the beginning of every trial session, the Presiding Judge asked whether all the witnesses had left the courtroom or not. Throughout the hearings, the witnesses were not presented before they would testify. Later, after the procedure of the interrogation, they were left in the courtroom. The oath of the witness was made before the Court in every case. They were warned about criminal responsibility for giving false information and evidence. Before questioning the rights of the witness were explained to them. The victims had attended the hearings until they were questioned.

#### *-Pressure on the witnesses/victims*

There were signs of psychological pressure on witnesses or victims during the trial by the Judge, clear throughout the interrogation of the accountant and her sister.<sup>14</sup>

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<sup>13</sup> Materials of monitoring, 3 and 17 February, 2015; 3 and 10 of March, 2015

<sup>14</sup> Relevant materials of monitoring, dated 3 and 10 of March 2015

## *Questioning of the victims*

### *- The questioning of Gulshan Orujova before the Court (the accountant of the organization)<sup>15</sup>*

Orujova was questioned during the hearing on 17 February 2015. At the next hearing (dated 3 March 2015), through the persistent motions of the Defense, Orujova was returned for additional questioning (as, due to arguments between the Judge and the Defense, the hearings had been closed that first day).

Under oath Orujova gave contradicting information in relation to the period she worked in the organization. First, she spoke in a narrative manner. Then she was questioned by the Court and the Prosecutor. In the course of cross-examination (questioning made by the Defendant and his lawyers), the accountant failed to remember some details, for example, the size of salaries which she received and wrote out to other employees. Further, when the Defense asked about documents No. 206 (of 2012) and No. 205 (of 2013), the registration numbers of which were not in compliance with the consecutive registration of the documentation; in relation also to the concrete transaction (the sums from some accounts were not withdrawn fully or were withdrawn over time) made in the past, the accountant could not answer specifically and said that she could not remember some details. As far as supervision and the translation into Russian from Azerbaijani allowed, the monitors noted a feeling of discrepancy between the indications and the facts specified earlier and the facts at interrogation of protection by the party. There was parallel intensity of events despite a noisy room. There was some confusion in the course of the questioning.

When the Defendant and his lawyers asked the accountant whether she knew that the signatures on the papers did not belong to Aliyev, she answered that she knew it only when Aliyev declared it. But after persistent questions from the attorney, she confessed that once she had undersigned a document instead of Aliyev (when he was out of the country).<sup>16</sup>

Orujova confirmed that from 2005 to December 2013 she had worked with Aliyev in the organization, her salary during the last period being 240 Manats, and the last 3 months unpaid. She mentioned that Aliyev had suggested she open a bank account to transfer part of the salary into this account. He was busy and she acted according to his instructions. Her sister was also employed in the projects. They did not receive their salaries. They continued to work because, they said, Aliyev had promised to make official transfers to the Pension Fund, a basis for receiving pension at the of retirement. The cashing out of the money in the bank was carried out by another employee – Sadiq Bagirov. Documents were prepared by the accountant personally, Aliyev signed, cashing in and then part of the sums were given to Sadiq Bagirov. In total, 119,000 Manats was transferred- the money made through translations and meetings, and some events not held according to plan.

On the question of the Prosecutor, Orujova replied that projects were in written form, had a budget and provided for salaries. The work depended on the requirements of donors (the type of documents and ways of payment). Bank accounts were in US Dollars and Euros. The sums and obligations in projects differed. She also answered other questions concerning, for example, accounts that were opened in the International Bank- two accounts in Manats, one in Euros and one in US Dollars.

Orujova answered a question in relation to the registration of grants and the procedure of appeal for registration in the Ministry of Justice. All grants were registered. She personally prepared letters and sent them to the Ministry. They often answered, but sometimes answers did not come at all. The Prosecutor mentioned that 13 grants are unregistered and started listing them by name. The accountant answered to each grant. The Prosecutor was interested what project reports were sent to the donors.

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<sup>15</sup> Materials of monitoring, dated 17 of February 2015

<sup>16</sup> Materials of monitoring dated 17 of February 2015

The accountant confirmed that these grants were registered, the documents had been prepared and sent to the donors. She failed to remember two projects, but she pointed out that they were small grants and small projects, so she could not remember them. Orujova also answered a question of the Prosecutor whether, in the projects, everything was carried out according to plan. During interrogation she noted the financial dependence on Aliyev many times.

The Defense lawyer made note that Orujova's observations were more similar to those of a witness than a victim.

On a question in relation her sister, Orujova answered that they needed people whose salaries would be registered. Their consent was generally a result of the assurance they would receive a pension in future. In the organization there were many volunteers who were not interested in receiving a salary. Her sister, for example, was not paid. Her sister went to the bank and opened a bank account on the request of Aliyev. She also went to the bank for all necessary operations. Sadig Bagirov was actively included in depositing money and often money did not come to the cash desk, going instead to Aliyev. In the Bank, Orujova's sister had to communicate with various employees. The people holding the position of supervisor often changed.

- *The questioning of Sadig Bagirov*<sup>17</sup>

The questioning of Sadig Bagirov lasted about 15-20 minutes.

Bagirov demonstrated that he had worked for Aliyev as a lawyer and coordinator in the projects, and later, since 2007, he had had the power to receive income through the bank. He claimed that, throughout each project, he also gave out all necessary instructions and carried out the work necessary for the running of the organization. But, he said, he did not actually work on the projects themselves and served only an administrative function. Bagirov claimed that he was not paid for some months in 2013. All documents were signed by Aliyev and Gyulshan.

In reply, Aliyev claimed that he had paid Bagirov all his salaries. When Aliyev's lawyer asked the victim a question as to why he would expect payment if he didn't participate in the project, Bagirov became a little confused. He claimed that in spite of the fact that he did not carry out project duties, he carried out other obligations for the organization.

At the end of his interrogation he said that he now saw his status of 'victim' in a different light but gave no further explanation.

During the next session of the trial, Sadig Bagirov filed a motion regarding the examination of signatures on financial documents connected to his salaries. Due to the fact that this motion was not satisfied, he asked the Court to pay attention to the fact that he had failed to receive only three months of salary and so, the amount of money was not big. He also filed this motion in written form.

- *Avsana Orujova's interrogation – accountant's sister*<sup>18</sup>

Avsana Orujova's interrogation was short, lasting around 10-15 minutes. After clarification of her identity and receiving an explanation of the procedural rights, Orujova explained that she had worked in the organization since 2009, working first as a trainer, then as a lawyer. In 2010, she left Azerbaijan to study abroad, and a bank account was opened at her sister's request. She argued the second reason she opened it was the transaction to the Pension Fund for her future pension. She did not receive any money personally. Before her departure, her salary was 243 Manats. She added that she did not intend to attend further hearings as she felt it was humiliating.

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<sup>17</sup> Materials of monitoring, dated 3 of March 2015

<sup>18</sup> Materials of monitoring, 3 of March 2015

She could not answer some questions or answered in a confused manner. The accountant was in the courtroom and helped her with answers, to which the Defense objected, without response from the Court.

Orujova did not attend further hearings.

- *Questioning of the new accountant of the Legal Education Society*

The witness showed that she had worked in the organization from February 2014. She dealt with administrative matters, documents, contracts, and reports. She answered a question whether money was accepted by Aliyev and stored in the safe. She confirmed Aliyev received money from the accountant. Transfers of money happened according to the project budget, and all money was spent. To the Prosecutor's question, the witness answered that each project has a corresponding description and relevant budget. The money had to be spent under these rules, and it was done so. To the next question of the Prosecutor she replied that donors were satisfied by the financial reports made by the organization, so there were no financial problems with the grants.

- *Questioning of the employee of International Bank*

The witness answered questions in relation to the procedures of cashing money, payment orders, transfers, verification of signatures, monthly reports of the Bank before the client and others. To the question from the Defense, the Bank employee mentioned that there were cases with differences in the signatures, but it did not happen in his presence- in transactions carried out by another bank employee. Also, he mentioned that the signatures were checked visually, not by computer or in any technical way.

When Defense lawyer Shahla Humbatova showed him the payment orders and asked him to say whether the signatures there were similar or not, the Bank employee was unable to give a precise answer. He answered that it was impossible to check each signature.

During the questioning by the Defense, the witness and Prosecutor (they approached the table of the Judge) together studied payment orders, including the payment orders shown by Humbatova. It became clear that there was difference in the signatures. The Judge seemed to become nervous when the Bank employee noticed distinctions in the signatures. The interrogation came to an end.

### **2.5.2. *The position of Intigam Aliyev***

When the Court once again asked Intigam Aliyev if he admitted the charges or not, he answered that to give an answer, first, the charges needed to be clear, while he did not understand them. The Court answered that it was the job of his lawyers to explain the charges to him. Intigam Aliyev protested this and argued that the indictment had been made so unlawfully that it was difficult to understand.

Throughout the hearings Aliyev answered all the questions asked by the Judge and observed his work process in detail.

In general, Intigam Aliyev objected to the charges, claiming that he was paying all taxes, the projects and grants he had were registered in the relevant administrative bodies. All this documentation was presented by him personally. He said he had not participated in any unlawful activities.

As to the charges, he argued that he was accused of such crimes which belong to the activity of a commercial organization, and he works in a non-commercial organization that by itself excludes these charges. He said he was not engaged in illegal business activity. He was engaged in human rights activity, education, trainings, sending demands to the European Court; in short that he was an activist, not a businessman.

In his last speech at the Court, Aliyev<sup>19</sup> spoke about the political context of his case. Since 2001 he had prepared more than 200 applications for the European Court, including more than half with statements connected to violations allowed during the parliamentary elections of 2010. At the time there was a continuous process of communication over approximately 40 of these statements. In the specified cases he represented the interests of the heads of the leading political parties, public figures, and activists of civil society (connected with violation of freedom of expression, association, the rights to fair trial, prohibition of torture, etc.).

Intigam Aliyev emphasized that the government did not execute properly the judgements regarding elections. He claimed his work played a role in the present charges against him.

All Aliyev's motions in relation to financial documents, expertise, grant registration documents, etc. were denied. Also, during the investigation and trial hearings, the investigative authorities did not cease pressure on witnesses. He touched upon such issues as meaning of charges, pointing again to the fact that he was accused of such crimes which belong to the activity of a commercial organization, while he worked in a non-commercial organization that by itself excluded these charges.

- The last speech of the lawyers<sup>20</sup> focused mostly on the legal aspects of the case. The lawyers explained the real meaning of each charge against Intigam Aliyev. They identified the negating evidence, including the facts certified by the accountant Gulshan Orujova and the other witnesses of the Prosecutor. They mentioned procedural violation during detention, search of the office and flats, during the trial, etc. They also mentioned many other aspects surrounding the current case, including the general situation in Azerbaijan, Aliyev's reputation, etc.

### **2.5.3. Position of the Prosecutor**

The Prosecutor stated both at the pre-trial investigation and in the courtroom, that Intigam Aliyev had unlawfully used the grant money provided by donors, abused his power and started illegal business activity.

According to the indictment, with regards to this criminal case Intigam Aliyev was accused regarding the following: that he, as the president of the Legal Education Society founded on 20 May 1999 and registered on 2 June 1999, received financial resources in the name of grants by international donor organizations and donor organizations of foreign countries through contracts not registered in the relevant executive authorities and acting as a legal body without securing the registration of his appointment as a chairman and legal representative of the organization in accordance with Article 9.3 of the Law of the Azerbaijan Republic on State Registration and State Registration of Legal Bodies. As a person carrying out organizational and decision-making functions in accordance with his special authority, the Prosecutor claimed Aliyev misappropriated funds between 2009-2014 by deliberately adding false information to monthly payment tables, payment taxes and expenditure orders on honorariums and salaries for services, which are official documents having been agreed by the parties compiled separately on behalf of these persons. He also claimed Aliyev abused power with the motive of greed, engaged in illegal entrepreneurship through forgery, and evaded payment of a large sum of taxes to the state budget.

The Prosecutor claimed that Intigam Aliyev deliberately, and with a motive of greed, used his power contrary to service interests in accordance with the plan prepared in advance; abused hierarchy by using Gulshan Sabir Orujova, who worked as the chief accountant in the Legal Education Society; opened a personal bank account (number 050834843801AZN01) at the Unibank commercial bank on 14.01.2009 in the name of Gulshan

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<sup>19</sup> Materials of 22 of April 2015

<sup>20</sup> Materials of 21 of April, 2015

Orujova's sister Afsana Orujova; received grants from various donors. Additionally, as the president of the Legal Education Society and as a person registered as a taxpayer, Intigam Aliyev by abusing his authorities evaded paying tax for the provided services for the purpose of profiting from a large sum allocated to the projects of the Legal Education Society without registering in the state.

Aliyev, according to the Prosecutor, as the head and representative of the legal body and knowing that his activity was illegal, appointed himself as a project director carrying out decision-making and organizational functions, hired employees to various positions, organized payment of money under the name of "salary" and "honorarium" for himself and other persons involved in these projects, carried out illegal entrepreneurship through unregistered grant agreements contrary to the service interests, and caused significant harm to the economic interests of the state and society by profiting from a large sum of 431092,40 AZN. Further, he allegedly evaded payment of taxes of a total of 65636,85 AZN based on articles 124, 150.1.6, 218, 219, 220 of the Tax Code of the Azerbaijan Republic for carried out work and provided services for the total sum of 496729,25 AZN for 13 grant agreements not registered in the relevant executive authorities.

With these actions, Intigam Aliyev committed criminal actions under Articles 179.3.2 (misappropriation of a large amount of money), 192.2.2 (illegal entrepreneurship), 213.1 (tax evasion), 308.2 (abuse of power), and 313- (forgery) of the Criminal Code of the Azerbaijan Republic. The Prosecutor in his final speech requested 9 years of imprisonment for Aliyev.

#### **2.5.4. Verdict of the abovementioned case<sup>21</sup>**

On 24 of April 2015, Intigam Aliyev was sentenced to 7 and a half years of jail term and 3 years of restriction on holding a public office. He was also obliged to pay costs for expertise amounting to 300 Manats.

#### **2.6. Right to an effective defense**

*- To be informed about charges in the correct manner, clearly*

The Defendant was not informed about the charges in accordance with the international standards, nor was he promptly informed about the grounds for his arrest. Further, the meaning of the charges against him was not explained clearly.

He did not plead guilty as, firstly, he considered all accusations illogical and irrelevant. The Defense filed a motion to have the accusations properly explained. The Prosecutor responded that all accusations were in accordance with the law. Presiding Judge Eldar Ismayilov stated that the court proceedings would show which accusation is relevant to which article.

*- Lawyer of his own choosing*

The Defendant was represented with a lawyer of his own choosing. He had no lawyer during the first interrogation process in the Investigation Office.

*- To have adequate time/opportunity for the preparation of his position/ limited access.*

He was not afforded sufficient time and means to prepare his defense. For example, the motion about the selection of pre-trial detention as a restrictive measure and the documents attached to it were not submitted to the Defense.

According to that fact the office door was sealed, the defense had no possibility to use all necessary means to prove Aliyev's innocence.

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<sup>21</sup> Materials of the monitoring, dated from 21 of April 2015

During the court hearings, despite his and his lawyer's demands and requests, he did not have an opportunity to meet in private with his defense lawyer.

As was clarified by the different lawyers and NGO activists, the time given for the meeting with the lawyer in the prison was limited. Also, the prisoners had a chance to meet with one of the lawyers (if he/she had two or more, he could not meet with all of them). Therefore, the concern arises regarding inadequate time for the legal consultations and preparation of defense position for the Court.

Aliyev declared many times that he was not given the chance of working in prison conditions. The document prepared by him was taken out of the cell without his permission. Also, many times he was trying to prepare his last speech, but the administration in prison confiscated it.

- *Confidence of communication with the counsel /limited access*

During the hearings, the Defendant and defense counsel had consultations. At the request of Intigam Aliyev, at the beginning of the court hearings (sometimes in the middle of the hearings) time was provided for communication with lawyers. The consultations lasted from 10 minutes up to half an hour. In such case, the Court left the courtroom. The public was sometimes allowed to stay in the courtroom and enjoyed limited opportunity to communicate with Aliyev from distance.

The guards stayed in the courtroom. Sometimes they stood close to the bench of the party, as if to better hear the conversations between lawyers and the Defendant. It seemed that the party was prevented from speaking freely.

Also, Aliyev was limited in the possibility of consultations with the lawyers during the period he spent in the cage in the courtroom.

- *Access to the investigation materials*

On the current case the Defendant and his lawyers had problems with access to the materials in the period of pre-trial and trial investigation. This limitation is prescribed by the Criminal Procedure Code (Article 91.5.22, 219, 284 and 287). Due to this, the party was limited in their right for effective remedy. The counsel of the Defendant was limited in access to the minutes of the hearings.

## **2.7. Relevant law/Criminal Procedure Code of Azerbaijan**

### **Article 91.5.**

**91.5.** The accused shall exercise the following rights in accordance with this Code:

**91.5.1.** to know what he is accused of (content, factual description and legal classification of the charge) and to receive a copy of the corresponding decision immediately after the charge is brought, the accused is remanded in custody or the decision on the choice of restrictive measure is announced;

**91.5.2.** to receive written notification of his rights from the person who detained or arrested him or from the preliminary investigator, investigator or prosecutor;

**91.5.3.** To acquaint himself with the record of detention and arrest immediately after it is drawn up and to make observations for inclusion in the record;

**91.5.4.** To have defence counsel from the time of the arrest or the announcement of the charge;

**91.5.5.** To have the help of defence counsel free of charge;

**91.5.6.** To inform his family, relatives, home, workplace or place of study immediately after detention, by telephone or other means;

**91.5.7.** To choose his defence counsel independently, to dismiss counsel and to conduct his own defence if he

waives the right to defence counsel;

**91.5.8.** To have unlimited opportunities and time to meet his defence counsel in private and in confidence;

**91.5.9.** To be questioned at his own request with his defence counsel present;

**91.5.10.** To give statements, not to incriminate himself or his relatives and in general to refuse to testify as well as to give or refuse to give statements concerning the charge against him;

**91.5.11.** To give statements in his mother tongue or in a language he knows;

**91.5.12.** To have the help of an interpreter free of charge;

**91.5.13.** To raise objections and to submit applications;

**91.5.14.** To participate in investigative or other procedures or to refrain from participating in them unless this is prohibited by another provision of this Code;

**91.5.15.** To participate in investigative or other procedures conducted at his own request with the help of his defence counsel;

**91.5.16.** To present evidence and other material for inclusion in the case file and examination by the court;

**91.5.17.** To plead guilty or not guilty;

**91.5.18.** To object to the acts of the prosecuting authority and to have such objections noted in the records of investigative and other procedures;

**91.5.19.** to acquaint himself with the records of investigative or other procedures in which he takes part, to make observations on the accuracy and completeness of the written record, and when participating in investigative or other procedures and in court hearings, to require the inclusion of the necessary circumstances in the appropriate record;

**91.5.20.** To take cognisance of decisions on expert reports and of the experts' opinions;

**91.5.21.** To take cognisance of documents presented to the court by the prosecuting authority confirming that the arrest and detention on remand are lawful and justified;

**91.5.22.** To take cognisance of the case file from the end of the investigation or the discontinuation of the criminal proceedings and to make copies of the necessary documents relating to it;

**91.5.23.** To object to the discontinuation of the criminal proceedings without grounds of acquittal;

**91.5.24.** To demand a public hearing within a reasonable time;

**91.5.25.** To participate in court hearings at first instance and on appeal and in the examination of the case file;

**91.5.26.** To participate in the selection of jurors in the court hearing at first instance;

**91.5.27.** When conducting his own defence, to make an introductory statement (pleading either guilty or not guilty of the charge against him and stating whether or not he recognises the civil claim), to speak and to reply at hearings of first instance and appeal courts;

**91.5.28.** To make a final statement in court;

**91.5.29.** To be informed by the prosecuting authority of the decisions which affect his rights and legal interests and, on request, to receive copies of those decisions, including those concerning the choice of restrictive measure, the conduct of investigative or other coercive procedural measures, the charging of the accused and the announcement of the charge, and copies of the indictment, civil claim, judgment, other final decisions of the court and complaints and appeals to the appeal courts and the Supreme Court;

**91.5.30.** To lodge complaints against the decisions and acts of the preliminary investigator, investigator or prosecutor;

**91.5.31.** to appeal against the judgment and other decisions of the court to the court of appeal and the Supreme Court, or to the latter on additional appeal, and to receive copies of those decisions;

**91.5.32.** To acquaint himself with the record of the court hearing and to add observations to it;

**91.5.33.** To withdraw any complaint lodged by himself or his defence counsel;

**91.5.34.** To be reconciled with the victim;

**91.5.35.** To express objections to circumstances made known to him through information brought to his



attention by the prosecuting authority or through complaints made by the other parties to the criminal proceedings;

**91.5.36.** To participate in appeal court hearings and Supreme Court hearings on appeal, on additional appeal and on the basis of newly discovered facts, further to a complaint of his own, if he is not held on remand and if he objects to a complaint by another party to the proceedings and to take part in the court's examination of the case file;

**91.5.37.** To be informed of appeals and complaints relating to the case and to raise objections to them;

**91.5.38.** To express opinions on applications and suggestions by other parties to the criminal proceedings as well as on matters being decided by the court;

**91.5.39.** To object to unlawful acts of the opposite party to the criminal proceedings;

**91.5.40.** To be reimbursed for costs incurred during the proceedings and receive compensation for prejudice caused by unlawful acts of the prosecuting authority;

**91.5.41.** To be acquitted if the charge is not proved;

**91.5.42.** To exercise the other rights provided for in this Code.

**91.6.** When independently conducting his own defence, the accused shall exercise all the rights of his defence counsel as provided for in this Code, as far as is possible in his position.

**91.7.** The accused's exercise of or refusal to exercise his rights shall not cause him to suffer prejudice or detriment. Except where he intentionally names a person in the knowledge that he was unconnected with the offence, no liability shall accrue to the accused on account of his statements and submissions.

**91.8.** The accused shall fulfil the following duties in accordance with this Code:

**91.8.1.** To attend as required by the prosecuting authority;

**91.8.2.** To submit to a search and body search when detained;

**91.8.3.** To be medically examined, to have fingerprints taken, to be photographed, to have samples of his blood and body fluids taken;

**91.8.4.** To be examined;

**91.8.5.** To submit to an expert opinion;

**91.8.6.** To comply with the instructions of the preliminary investigator, investigator, prosecutor or the president of the court;

**91.8.7.** To not leave the courtroom during the hearing without the permission of the president, until a break is announced;

**91.8.8.** To observe the rules of court;

**91.8.9.** To fulfil the other duties provided for in this Code.

**91.9.** The rights of an accused person who is under age or lacks legal capacity shall be exercised in his stead by his legal representative in accordance with this Code.

## **Article 219. The end of the investigation**

**219.1.** The investigation shall end when it is decided to send the case to Court so that the indictment may be drawn up and compulsory measures of a medical nature may be taken, or when it is decided to discontinue the criminal proceedings.

**219.2.** In criminal cases subject to compulsory investigation, after the performance of investigative procedures which cannot be delayed and in any case within 10 (ten) days of the commencement of criminal proceedings, the preliminary investigator shall transfer the criminal case to the investigator under the terms of the relevant decision. A copy of this decision shall be sent within 24 hours to the Prosecutor in charge of the procedural aspects of the investigation. The accused, his legal representative and defense counsel and the victim, civil party, Defendant to the civil claim and their representatives who have participated in the initial investigative procedures shall be informed that the case has been transferred to the investigator.

## **Article 284. Presentation of the case file before the drawing up of the indictment**

**284.1.** When the investigator deems that there is sufficient evidence to draw up the indictment and transfer the case to the Prosecutor in charge of the procedural aspects of the investigation, he shall:

**284.1.1.** Inform the accused, his defense counsel, the victim, the civil party, the Defendant to the civil claim or their representatives of the end of the investigation;

**284.1.2** Specify a place and time for the parties to the criminal proceedings to take cognizance of the case file.

**284.2.** The investigator shall make arrangements for the victim, civil party, Defendant to the civil claim or their representatives to take cognizance of the case file, on request, and for the accused and defense counsel to be able to do so without having to make a request.

**284.3.** If counsel for the accused or the representatives of the victim, civil party or Defendant to the civil claim cannot attend at the appointed time, the investigator shall extend the arrangements for taking cognizance of the case file for 5 (five) days. If defense counsel or the representative fails to attend within this period, the accused shall be offered the opportunity to appoint, or reach an agreement with, another defense counsel, and the victim, civil party or Defendant to the civil claim shall be given the opportunity to appoint another representative.

## **Article 287. Filing of applications after the presentation of the case file**

**287.1.** After the presentation of the case file the investigator shall ascertain whether the accused, defence counsel, the victim, the civil party, the Defendant to the civil claim or their representatives wish to file applications concerning the conduct of additional investigative procedures or the taking of new procedural decisions. At their request, parties to the criminal proceedings may be allowed 48 hours to prepare and file a written application.

## **2.8. Conclusions regarding trial procedures in City Court**

- The Court formally followed all stages of the proceedings. The victims were questioned, as were the witnesses. The motions were deliberated. The opportunity of debate and last speech was given to all parties. The Court deliberated the motions and evidence. The Court studied the case materials in public.
- But the Court failed to examine the grounds of the charges against Aliyev. He was imprisoned on charges that are widely considered to be fabricated. It is clear that the trial was based on unfounded charges and that there was no evidence of Aliyev's guilt. The Court did not analyze materials presented as evidence by the lawyers or the evidence made during the hearings (such as materials of interrogation of the witnesses and victims).
- The Court was not independent in the decision making process and a lack of impartiality and equality of arms was evident.
- The hearings were not fully open to public.
- The Defendant had problems with confidentiality of communication with his lawyers: he had limited access to the materials at times.
- He was not promptly informed of the grounds of his arrest. Further, the meaning of the charges was not explained clearly.
- The transportation for the hearings was not in full compliance with the international standards.
- The medical treatment was not in compliance with the relevant standards of human treatment as well the other prison conditions.
- The communication with the outsideworld was limited.

### **3. Baku Appellate Court**

#### **3.1. General Information**

On 21 July 2015 a hearing was held in Baku Appellate Court, Azerbaijan. The case hearing was over in one day. The Court left the courtroom for deliberation for a few minutes. The appeal was dismissed and the verdict and the sentence of the First Instance Court was fully upheld.

The Collegium was composed of 3 judges, chaired by Judge Mirzali Abbasov (Presiding Judge), Ilgar Murguzov, Gadim Babayev. The victims were not present in the Appellate Court.

#### **3.2. Public hearings/Support from society**

Two observers from the British embassy, two observers from the German embassy, one observer from the Dutch embassy, two observers from the embassy of France, International Partnership for Human Rights, were present in the courtroom.

It was crowded at the entrance and not everybody managed and was allowed to enter the court. The observer of the Human Rights House Tbilisi was allowed to enter the building but only after the first break.

#### **3.3. Prison conditions**

The members of the family found out that it was planned to move Aliyev to another prison (this decision was made in response to many requests regarding poor conditions in the prison he was placed in at the moment).

#### **3.4. Court impartiality /equality of the parties**

##### *- The courtroom and position of the parties*

The sitting plan of the parties, like the fact that the Prosecutor was sitting close to the judges; the parties did not sit *vis-à-vis*; the Defense lawyers and Defendant were sitting next to the Prosecutor; broke the standard of visual equality of the parties.

The Defendant was in a glass cage which meant that the cell was made from wood one meter from the ground and the rest was made of glass. The Defendant was guarded by three policemen not allowing anyone to approach the glass cage despite the fact that neither the audience nor the Defendant were in a position to hear each other. The public was not able to hear Intigam Aliyev without a microphone and speakers and he was in the same position. Time to time if the Judge did not like what Aliyev was saying, he was easily able to turn off the microphone so nobody was able to hear Aliyev's voice.

Approximately 30 attendees and 5 court security officers were sitting in the courtroom. Some people had to stay outside due to the lack of seating.

##### *- Opportunity to have consultations with the lawyers/Confidentiality during the consultations*

Aliyev requested a break to consult confidentially with lawyers about the defence strategy twice, which was satisfied. The Court asked the people present to leave the room. Everybody left, but the guards stayed (as an observer noted, he joined the hearings after the first consultation break. So, the situation in relation to the first break could not be described).

##### *- Position of the lawyers*

Once again the lawyers argued that all charges had been fabricated, all opportunities and efforts of the Defense to achieve access to needed documents were denied both by the investigation body and by the Courts. The Azerbaijani Ministry of Justice deleted the electronic system and it made impossible to access it. However,

when the Defense presented the documentation from the web-site of the Azerbaijani Ministry of Justice, obtained and verified by the Georgian state body, the Court did not consider it.

- *Position of Intigam Aliyev*

Aliyev continued his speech by mentioning the true reasons for his arrest, emphasizing its political character. The Presiding Judge interrupted and turned off the microphone several times, noting that the “this is not a symposium of international law”.

- *Motions of the Defence*

- The first motion was about the withdrawal of Intigam Aliyev from the glass cage where he was not in a position to hear everything clearly and participate normally in the discussion; the motion was not satisfied;
- Aliyev requested a break to consult confidentially with lawyers on how to define their strategy, twice, which was satisfied;
- The defense counsel Javad Javadov asked the Court to satisfy all motions which had been dismissed by the First Instance Court, and execute the only *motion* which had been satisfied by the First Instance Court but still remained unexecuted;
- Defense counsel asked to include in the case materials the graphic examination report made by the professor at Warsaw University that established conclusions differentiating from and in some parts contradicting the forensic-graphic examination carried out by local experts of state-owned forensic-examination facilities in Azerbaijan;
- The Counsel asked the Court to arrange re-examination of the above evidence.

• *Position of the Prosecutor*

- The Prosecutor found all of the motions groundless and saw no need to satisfy them.

The Court dismissed all motions.

- *Court Collegium/Deliberation process/ Verdict*

The Court Collegium at times became aggressive towards the Defendant. It was clear that the openness of Aliyev’s speech did not please them.

The process of deliberating on the motions was carried out inside the courtroom, without any discussion.

### 3.6. Conclusions regarding proceedings in Appellate Court

- The Court listened to the positions of the parties but did not analyze materials presented as evidence by the lawyers. The Court refused to make a new court investigation process. The Court failed to pay enough attention to the question of changing the prison detention to home arrest. The Court **did not seem impartial, equality of arms was not provided**; it was clear that the trial was based on unfounded charges and that there was no evidence of Aliyev’s guilt;
- Being placed in the glass cage, the Defendant was not in **the position to hear everything clearly and participate in the proceedings properly**; he could not consult with the lawyers effectively either;
- **The hearing was not fully public.** Not everyone who was at the court building could attend the first part of hearings (before break). During the second part of the hearings some people were not allowed to enter the courtroom due to the lack of space.

## **4. Supreme Court<sup>22</sup>**

### **4.1. Common information about proceedings at the Supreme Court**

The hearings took place on 26 January 2016 and 24 February 2016.

The hearings were conducted by the Collegium of three judges, chaired by Judge Gyuzal Rzaeva, with Fakhid Karymov and Imran Gadjigaybov. The Defendant was represented by the lawyer Javad Javadov (the lawyer of his choosing).

The hearing on 26 January 2016 started at 12.30 and finished at 13.55 due to the lunch break. The hearing was renewed at 14.30 and went on until 14.45. The Court declared that they needed time to study the case in detail, so the hearing was postponed.

*The second hearing took place on 24 of February 2016*, and lasted from 11.00 to 11.45 (with a break to deliberate on the decision from 11.15 to 11.40). The parties presented their positions again. The judges left the room to make a decision. It took about 25 minutes, and after returning, the Presiding Judge declared that the decision of the Appellate Court remained in force.

### **4.2. Public hearings**

The hearings were public. 15 persons, together with the colleagues of Aliyev, were present in the courtroom. No family members attended but the representatives of France, British Embassy, European Union, and media were present.

#### *– Entry to the court and courtroom*

The situation was calm. No guards were present inside the courtroom.

### **4.4. Personal presentation before the Court**

Intigam Aliyev was not present before the Court based on his own choice. He said he found the hearing to be mere formality.

### **4.5. Court impartiality/Equality of arms**

#### **Hearing of 26 January 2016**

The hearing did not last long. The Court asked the defense counsel regarding the procedure of taking Aliyev's signature for the expertise and the conclusion made by the Polish expert. The counsel explained. The Court also asked about the procedures that took place in Georgia regarding the information that had been placed on the website of the Ministry of Justice of Azerbaijan. Lawyer gave all necessary information. Then the Collegium had a break. Renewing the hearings, the Court had further questions, regarding the expertise of signatures and materials from Georgia. The lawyer replied to all the questions.

#### **Hearing of 24 February 2016**

The parties presented their positions again, 10 minutes for each. First the defense lawyer spoke with regard to the cassation. He touched the topic of the unlawful search made both in the flat and office of Aliyev. Then he named different procedural violations made during the search and later, at the court. He requested the Court to declare the decision of the Baku Court of Appeals unlawful and to set Aliyev free. The Prosecutor disagreed

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<sup>22</sup> Materials of the monitoring, 24 January and 26 February 2016

with the lawyer. He said that all facts had been proven by the Prosecutor's Office and later by both instance Courts. He asked the Court to make the same decision as the Appellate Court.

– *Position of the lawyers*

The lawyer first gave a short preview regarding Aliyev as a lawyer. Then the defense counsel underlined the procedural violations during the search of Intigam's flat and office, the procedure of his interrogations, the expertise of his signature and false invoices signed by the accountant the expert opinion given by the Polish expert; the materials prepared by the Georgian colleagues and officially confirmed, and other details on the case, including the pre-trial period and both court instances, and the issue of inadmissibility of alternative expert conclusions at the Court. Considering these circumstances, the lawyer requested full acquittal of Intigam Aliyev.

– *Position of the Prosecutor*

The Prosecutor did not agree with the cassation appeal of the Defense and requested that the judgment of the Appellate Court be upheld. He pointed to the four grants which were not registered and the taxes that were unpaid as proof of Intigam Aliyev's guilt.

#### **4.6. Deliberation of cassation motion/verdict**

The last deliberation over the verdict lasted for 25 minutes and the Supreme Court upheld the decision of the Appellate Court.

#### **4.7. Conclusion regarding the hearing at the Supreme Court**

The Court seemed to **lack of impartiality**. There was no equality of arms and it was clear that the trial was based on unfounded charges and that there was no evidence of Aliyev's guilt;

**Hearings were fully public.**

### **5. Hearing held by the Plenum of the Supreme Court <sup>23</sup>**

The final hearing took place in the Supreme Court of Baku on 28 March 2016, based on the Prosecutor's protest regarding the severity of the verdict made on 24 of February 2016. The hearing was led by the Supreme Court Plenum. The Defendant was represented by the lawyers of his own choosing. Aliyev chose not to attend the hearing in person.

The hearings were not publicized and people were not permitted to enter the court building (under the procedural rules of Azerbaijan). Around 70 people came to the hearing, including members of his family, different NGOs, and media. It was known in advance that the hearing of the Plenum would not be open to the public.

The hearing lasted for about 40 minutes. As a result, Intigam Aliyev was released on a 5-year probation. Aliyev was released from prison at the end of the same working day.

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<sup>23</sup>**Article 73. Jurisdiction of the Supreme Court of the Republic of Azerbaijan** 73.1. The Supreme Court of the Republic of Azerbaijan shall function as the highest court of appeal in criminal cases and other prosecution matters. 73.2. The criminal and administrative division of the Republic of Azerbaijan shall hear complaints and appeals against judgments or other decisions by the courts of appeal and the jury courts. 73.3. The Plenum of the Supreme Court of the Republic of Azerbaijan shall hear cases, on additional appeal, on the basis of submissions by the President of the Supreme Court of the Republic of Azerbaijan, appeals by the Principal Public Prosecutor of the Republic of Azerbaijan and complaints of the defense against decisions of the Supreme Court, and on the basis of newly established facts.

## Observer's Narrative about the

### Trial of Rasul Jafarov<sup>24</sup>

## General information

### 1. Summary

On 16 April 2015, Rasul Jafarov was sentenced to 6.5 years in prison by Baku Court of Grave Crimes (City Court). Both the Appellate Court and the Supreme Court upheld the decision of the City Court. He was also prohibited from holding any office for 3 years. He was convicted under Articles 192 (illegal business activity), 213 (tax evasion) and 308 (abuse of power) of the Criminal Code of Azerbaijan.

The charges against Rasul Jafarov were fabricated. He was detained in **the absence of reasonable suspicion** that he had committed a criminal offence. No order was shown to him and no supporting documents were presented. **He was not promptly informed** of the grounds for his arrest. Further, **the meaning of the charges was not explained to him clearly**. The Defense filed a motion to replace the measure of pre-trial detention with house arrest or bail but the Court refused to satisfy this motion. Further, the Court failed to examine all the facts arguing for or against justifying the necessity of his detention despite the fact that there was proof that Rasul Jafarov had had numerous chances to disappear but had not done so. The court decision repeated the position of the Prosecutor and no more. The motivation of the Court cannot be considered as verification of the lawfulness of the detention.

The Defendant was represented **by the lawyer of his own choosing**. **He had no lawyer** during the first interrogation process at the Prosecutor's Office. He represented himself at all proceedings before the Court.

He had **problems with access to the case materials** in the period of pre-trial proceedings and trial investigation.

**Hearings were not always public** in the City Court or Appellate Court. The unwillingness of the judges to use the microphones made it difficult to understand the speeches. A motion requesting the microphones be turned on was not satisfied. Despite the fact that the hearings were open to the public, at times, on arrival, people had to wait outside the room due to the lack of seating. Further, the location of the judges and the parties and a large cage (covering part of the hall) did not allow full visibility of the courtroom.

The **transportation procedure** for the court hearings, handcuffing and initial placement in the cage violated European standards. However, after the motion from the defense lawyers, Rasul was allowed to sit next to his lawyers.

**The transportation** to the court was made by special vans (cars) which were uncomfortable.

During the court proceedings and pre-trial period **confidentiality of communication** with the counsel was not provided (and access was limited). During the hearings in the City Court, the Defendant and defense counsel had consultations. The guards at times stood close to the bench of the party as if to hear the conversations among lawyers and the Defendant. **The Defendant was also restricted in freedom to consult** lawyers during the period he spent in the cage in the courtroom. During the consultations he had, the guards watched and remained close.

**Equality of arms** was not provided. The Prosecutor had greater privileges before the Court than the defense.

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<sup>24</sup> This report is based on the case materials and the materials of the court observation made by Human Rights House Tbilisi, as well as interviews made with members of the family, colleagues, others NGOs, and public activists.

The Court **was not independent in the decision-making process** and the **lack of impartiality was evident**. Materials Jafarov and his counsel presented to the Court as evidence were not considered and the Judge issued the final verdict by referring only to the indictment. The victims considered their status of “victim” unclear due to the fact that all of them received payment for the work done or for the rent. Some victims/witnesses stated that they had not met Jafarov before as they had communicated via internet or mail, but all conditions, including payment, were executed by him or his representatives. Further, all relevant contracts were prepared accurately. During the hearings some victims (Anar Jabiyev and Ahmad Geybatov) asked the Court to remove his status of victim or change it to “witness”, but unsuccessfully. They also filed written motions before the Court. Among other things, all the witnesses of the prosecution were either unaware why they were victims or testified that Jafarov had never done them any harm. Some victims also highlighted the fact that the Prosecutor had psychologically pressured them.

The Court did not analyze materials presented as evidence by the defense lawyers or other evidence (such as the materials of interrogation of the witnesses and victims). **It was clearly observed that the trial was based on unfounded charges and that there was no evidence of Jafarov’s guilt.**

On 17 March 2016, the President of Azerbaijan, Ilham Aliyev, issued a presidential pardon for 148 prisoners, among them for Rasul Jafarov.

## *2. About Rasul Jafarov*

Rasul Jafarov, 31 years of age, is a leading human rights defender in Azerbaijan. He has led multiple efforts to draw international attention to the worsening situation in his country, to educate Azerbaijani citizens about their rights, and to ensure that political prisoners receive effective legal representation. For his work, Jafarov has been continuously targeted by the Azerbaijani government.

Rasul Jafarov has worked as reporter for the [Institute for Reporters’ Freedom and Safety](#) (IRFS), where he investigated (as a reporter) numerous criminal cases against journalists, prepared reports about the cases, and monitored the trials and legal correspondence.

He is also a founder and chairman of the Human Rights Club (HRC), a non-formal group which has been denied legal registration by the Azerbaijani Court since establishment in 2010. Within the HRC, in 2012 Jafarov coordinated the ["Sing for Democracy" campaign](#). Using the occasion of Azerbaijan hosting the [Eurovision Song Contest](#), this campaign demanded that citizens' rights be respected, and highlighted that two journalists critical of the authorities in Azerbaijan had been murdered. The "Sing for Democracy" campaign received wide international coverage. In December 2012, “Sing for Democracy” was expanded and rebranded as [“Art for Democracy,”](#) which Rasul Jafarov continues to lead.

Also in 2012, Jafarov organized the "Expression Online Initiative" that coincided with the [Internet Governance Forum](#) which took place in Baku, Azerbaijan. The campaign continues to expand Internet freedoms by protecting online activists, streamlining and initiating new Internet freedom legislation, as well as engaging in practical solutions to protect Internet rights.

Jafarov has been involved in a number of other efforts to educate citizens of Azerbaijan about their rights, to ensure legal representation of political prisoners, and to highlight human rights abuses.

He was also an active participant of the [Eastern Partnership](#) Civil Society Forum. In 2014, together with [Leyla Yunus](#), Rasul Jafarov led a working group which worked on compiling a list of political prisoners in Azerbaijan. In June 2014, Jafarov was included in the [Natalia Project](#)– an alarm and positioning system for human rights defenders at risk. Jafarov was chosen as a Finalist for the 2015 Front Line Defenders Award because of his work as Head of the Human Rights Club and Coordinator of the Art for Democracy campaign,



which has launched several campaigns against politically-motivated imprisonment, including the Sing for Democracy campaign which took place in the run up to the 2012 Eurovision Song Contest. During this campaign, singers from democratic countries were encouraged to voice their concern at human rights violations in Azerbaijan through their music.

### ***3. Facts of the case***

During his visit to Kiev (July, 6-11, 2014) Rasul Jafarov found out that his personal bank account had been frozen based on a court decision (Sabail District Court, decision of 7 July 2014) in connection with a previously raised criminal case.

On 13 May 2014, the Prosecutor General's Office initiated a criminal case against a number of domestic and international NGOs and heads of NGOs. The proceedings were initiated pursuant to Article 308.1 (abuse of power) and 313 (service forgery) of the Criminal Code of Azerbaijan. The alleged basis for the case was "irregularities found in the activities of a number of NGOs of the Azerbaijan Republic and branches or representative offices of foreign NGOs". Coming back to Baku, Jafarov applied to the Court to have a copy of this decision. He received this decision. On 9 of July, 2014, on his way to Tbilisi for a conference, on crossing the state border by train he was stopped and informed that he had no permission to leave Azerbaijan as the result of the Court decision dated 25 July 2014.

On 30 July 2014, he was invited to the Prosecutor General's Office for questioning as a witness. A search was conducted in the office of the Human Rights Club, but nothing was found. So, Jafarov, of his own will, provided for the Prosecutor General's Office all needed documentation, including financial papers and agreements.

On 2 August 2014, Jafarov was invited again to the Grave Crimes Investigation Department of the General Prosecutor's Office for a second interrogation. Again, he provided of his own will the remaining documentation asked for. For the second time he was questioned as an Accused. After his appearance, he was detained. No official order has been presented. He was charged with criminal offences under Articles 192.2 of the Criminal Code (illegal business activity), 213.1 (tax evasion) and 308.2 (abuse of authority).

On the same day, based on charges of "illegal business activity", "tax evasion," and "abuse of official power," the Nuzami District Court delivered a decision of three-month pre-trial detention which was later extended. The Court indicated the existence of grounds to assume that Jafarov may hide from the prosecuting authority and court; illegally influence parties in the criminal proceedings, interfere with the course of pre-trial investigation and court proceedings, fail to comply with a summons issued by the prosecuting authority or otherwise evade criminal responsibility or punishment.

On 4 August Rasul Jafarov lodged a complaint with the Baku Appellate Court. The Court dismissed the complaint.

On 19 August 2014, he lodged before the Nizami District Court another motion - to change the measure of pre-trial detention with house arrest or bail. The motion was dismissed as ungrounded. On 20 August Rasul Jafarov filed a complaint. On 28 August the complaint was dismissed again by the Baku Appellate Court.

The pre-trial period lasted until December 2014.

### ***4. Court hearings in the Grave Crimes Court of Baku***

The court hearings started late January and finished in April 2015 (in particular, the hearings took place on 27 January, 10 February, 24 February, 5 March, 12 March, 31 March, 9 April, 14 April, 15 April, 16 April).

The hearings were held in Baku, by the Grave Crimes Court, Judge Eldar Ismayilov (Samed Vurgun Str. 30, Baku, Azerbaijan). The Defendant was represented before the Court by lawyers Fariz Namazli and Alibaba Rzayev. The Prosecutor was Mubariz Mirili.

According to the official account of the Prosecutor, Jafarov unlawfully used grant money provided by donors, abused the law and started illegal entrepreneurship. The damage caused was 6,162 AZN as a result of illegal entrepreneurship and tax evasion.

Jafarov was sentenced to six and a half years in prison. The Court did not analyze materials presented as evidence by the lawyers. The Judge even said that by watching the CD Jafarov's side had presented to the Court as evidence, it could be said that Jafarov had misappropriated huge sums of money. Yet the CD was basically a description of all the project activities the Human Rights Club had implemented prior to his arrest.

### **Appellate Court**

The appeal complaint was lodged before the Appellate Court (Zahid Khalilov Street 540, Baku, Azerbaijan, 1073) which carried hearings based on the appeal of Rasul Jafarov's lawyers. The hearings took place on July 21 and 31, 2015. The Court upheld the decision of the City Court.

Both hearings were held by a Collegium of three Judges, chaired by Judge Hasan Ahmadov, the Presiding Judge, Mirpasha Huseinov and V. Murzagulov. The first hearing lasted for 15 minutes, the second took about two hours.

The Defendant was represented by lawyers Fariz Namazli and Alibaba Rzayev (lawyers of his choosing). The victim Ahmad Heibatov was also present at the second hearing with a complaint regarding the fact that he did not consider himself a victim.

After five minutes' deliberation, the judges of the Baku Appellate Court amended the verdict passed by the Court of Grave Crimes, dropping the tax evasion charge against Rasul Jafarov after he had paid his tax debt, and reducing his sentence by three months- bringing it down to six years and three months.

Two hearings were scheduled on 21 July, 2015 (Intigam Aliyev's case hearing started just 30 minutes after Jafarov's). A lot of people were standing in front of the Court. Only family members (mother, brother, grandfather) and lawyers were permitted to participate in the hearing. It was crowded at the entrance and no one else was allowed to enter until Jafarov's hearing had ended.<sup>25</sup> As such, public hearings were held during the initial proceedings at the Appellate Court.

At the second hearing the public was allowed to attend. Observers from foreign embassies and international NGOs were also present.

### **Supreme Court**

The verdict was appealed to the Supreme Court of Baku (Yusif Safarov Str., 14, Baku, Azerbaijan). The hearings in the Supreme Court took place on 16 February, 2016 and were held by a collegium of three Judges, chaired by Judge Chairman Fakhid Karymov, with Imran Gadjigaybov and Gyuzal Rzaeva. The Collegium upheld the decision of the Appellate Court and left in force six years and three months of jail term.

The hearings lasted one hour, starting at 10.12, with break between 10.12 - 10.24 and finishing at 11.15. The first part aimed to take the Accused to the Court and the second to give the verdict.

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<sup>25</sup> Information about short hearings was given later by the members of Jafarov's family and his lawyers.

Rasul Jafarov was present before the Court together with his lawyer Fariz Namazli. The hearings were public, so were attended by anyone willing. Present were the representatives of the German Embassy, Human Rights House Tbilisi, US Embassy, and mass media (including Meydan TV, Azadliq newspaper, Turan information agency and others).

## **5. Relevant law**

### **Criminal Code of Azerbaijan**

#### **Article 192. Illegal business activity**

**192.1.** Implementation of business activity without registration in the order provided by the legislation of the Azerbaijan Republic, or without special sanction (license) in cases when such sanction (license) is mandatory, or with infringement of conditions of licensing, which caused damage to citizens, organizations or state of a significant size, as well as committed with extraction of income of a significant size – is punished by a penalty of from one up to five thousand times the nominal financial unit, or restriction of freedom for up to two years, or imprisonment for the term of about six months.

**192.2.** The same act committed: **192.2.1.** with extraction of income of a large size; **192.2.2.** by an organized group – is punished by restriction of freedom for up to three years or imprisonment for up to five years.

#### **Article 213. Evasion from payment of taxes**

**213.1.** Evasion of a physical person from payment of taxes or other obligatory payments in significant amount by not representing declarations on incomes when submission of the declaration is provided by a legislation of the Azerbaijan Republic, or by inclusion in the declaration of obviously deformed data on incomes or charges, or in another way – is punished by a penalty from one up to two thousand the nominal financial unit, or corrective works for up to one year.

#### **Article 308. Abusing official power**

**308.1.** Abusing official powers, that is deliberate, contrary to interests of service, use by the official of service powers from self-interest or other personal interest, causing essential harm to rights and legitimate interests of citizens or organizations or protected by law interests of a society or state – is punished by the penalty from one up to two thousand times the nominal financial unit, or with deprivation of the right to hold certain posts or to engage in certain activities for up to three years, or corrective works for up to two years, or imprisonment for up to three years.

**308.2.** The act provided by Article 308.1 of the present Code, entails heavy consequences – is punished by imprisonment for three up to seven years with deprivation of the right to hold certain posts or to engage in certain activities for up to three years.

*Note: 1. Officials in articles of the present chapter shall be persons constantly, temporarily or on special power carrying out functions of authority representative either carrying out organizational - administrative or administrative functions in state bodies, institutions of local government, state and municipal establishments, enterprises or organizations, and also in other commercial and noncommercial organizations. 2. Civil servants and employees of institutions of local government who are not admitted as officials, and also employees of other commercial and noncommercial organizations carry criminal liability under articles of the present chapter in cases which are specially provided by appropriate articles.*

### **Article 179. Assignment or waste**

179.1. Assignment or waste, is plunder of property entrusted to guilty by another person – is punished by the penalty at a rate from hundred up to five hundred of nominal financial unit, or public works for the term from hundred eighty up to two hundred forty hours, or imprisonment for the term up to two years.

179.2. The same acts committed:

179.2.1. on preliminary arrangement by group of persons;

179.2.2. repeatedly;

179.2.3. by person with use of service position;

179.2.4. with causing of damage in significant size – is punished by the penalty at a rate from two up to three thousand of nominal financial unit or imprisonment for the term from three up to seven years with confiscation of property or without it.

179.3. The acts, provided by articles 179.1 or 179.2 of the present Code, committed:

179.3.1. by organized group;

179.3.2. in large size;

179.3.3. by person, who has been convicted earlier two or more times for plunder or extortion – is punished by imprisonment for the term from seven up to twelve years with confiscation of property or without it.

### **Article 313. Service forgery**

Service forgery, that is the bringing by an official, and also civil servant or employee of institutions of local government who is not official, of official documents of obviously false data, as well as entering into specified documents of corrections deforming their valid contents, committed from mercenary or other personal interest – is punished by the penalty from five hundred up to one thousand times the nominal financial unit, or public works for up to two hundred forty hours, or corrective works from one to two years, or with imprisonment for up to two years with deprivation of the right to hold certain posts or to engage in certain activities for up to two years or without it.

### **Support from the society**

Numerous international organizations, including [Human Rights Watch](#), Amnesty International, the [Open Society Institute](#) and the [International Bar Association](#) expressed their deep concern regarding Rasul Jafarov's detention. A number of international and local organizations, including observers from the Kazakhstan Human Rights organization, Human Rights House Tbilisi, US Embassy, German Embassy, and EU representatives were present in the courtroom, alongside private persons, throughout the hearings.

The events were covered by mass media (including Meydan TV, Radio Liberty, Azadliq newspaper, Turan information agency and others).

Despite the fact that the hearings were open to the public, some people had to remain outside the courtroom due to the lack of seating. At the same time a lack of microphones made it difficult to follow the process. The motion concerning a request to turn on the microphones went unsatisfied. Further, the location of the judges and parties, and a large cage (blocking a part of the hall) did not give the chance for clear observation of the proceedings.

## **Prison conditions**

Rasul Jafarov did not complain of the conditions in prison or health problems, yet that does not exclude the possibility that he sometimes felt bad or that conditions in prison were satisfactory. It was revealed by Jafarov's relatives that Rasul had had stomach problems and was taking medication.

## **Communication with family members**

From the account of the family members, the prisoner was visited by the members of the family during his trial period.

## **II. Criminal proceedings on the case**

### **1. Detention/pre-trial period. Relevant law**

Rasul Jafarov was detained in the absence of reasonable suspicion that he had committed a criminal offence.

The Prosecutor's Office invited him for a second interrogation and instead of running a more effective investigation, took him into custody without reasonable evidence of his guilt. No order was shown to him and no supporting documents were presented. He was not promptly informed of the grounds of his arrest.

Further, the Court failed to examine all the facts arguing for or against the necessity of his detention. The Court decision repeated the position of the Prosecutor and no more. The motivation of the Court cannot be considered as verification of the lawfulness of the detention.

The detention was (under the Court decision) to be three months in duration. The Defense filed a motion to replace the measure of pre-trial detention of Jafarov with house arrest or bail but the Court did not satisfy this motion. Article 164 of the Criminal Procedure Code of Azerbaijan prevents the granting of bail to persons charged with a "serious crime". As such, the legislative system has an automatic mechanism preventing bail.

The Court failed the examination of the grounds of the charges against Jafarov. On 2 August 2014, Jafarov was imprisoned on charges that are widely considered to be fabricated.

## **Relevant law**

### **Criminal Procedure Code of Azerbaijan**

#### **Article 163. House arrest**

**163.1.** House arrest is a restrictive measure which restricts a person's liberties and a number of other rights by a court decision, without the Accused being detained on remand and isolated completely from society.

**163.2.** The choice of house arrest as a restrictive measure may be considered only at the request of the Defense instead of the decision taken for the person's arrest.

**163.3.** House arrest may be accompanied by application of the following measures, separately or, where possible, jointly:

**163.3.1.** prohibition to leave one's home at any time or at certain times;

**163.3.2.** prohibition to speak on the telephone, send mail or use other means of communication;

**163.3.3.** prohibition to contact certain people and to receive visits from anyone at home;

**163.3.4.** application of electronic monitoring devices and obligation to wear them and operate them; **163.3.5.** obligation to answer supervisory telephone calls or other monitoring signals, to telephone the preliminary

investigating authority or other authority monitoring the behavior of the Accused at fixed times, or to attend personally;

**163.3.6.** placing under observation of the Accused or his home, as well as a police guard on his house, flat or other accommodation given to him;

**163.3.7.** other measures which ensure the required behavior and partial isolation of the Accused.

**163.4.** The rules governing decisions about house arrest, its duration and prolongation and release from house arrest shall be regulated by the provisions of this Code on arrest as a restrictive measure.

**163.5.** When a court decides whether to release an accused person from detention on remand, it shall decide whether or not to order house arrest as a restrictive measure. Complaints or appeals against the court decision to apply house arrest as a restrictive measure may be made to the Appellate Court. If the prosecutor in charge of the procedural aspects of the investigation does not agree with the decision:

**163.5.1.** the court decision on house arrest as a restrictive measure shall become final only after confirmation by the Appellate Court;

**163.5.2.** before the legality and grounds of this decision are examined by the Appellate Court, the decision on arrest as a restrictive measure taken by the Court of First Instance shall remain in force until the matter of house arrest is decided.

**163.6** Application of house arrest as a restrictive measure may be discontinued if so decided by the investigator or the prosecutor in charge of the procedural aspects of the investigation in the circumstances provided for in Article 157.8 of this Code.

## **2. City Court Instance**

### **2.1. Courtroom and the sitting plan of the parties**

The hall was small (width of 4 meters, length of 17-19 meters). The room was adequately lit but the walls and chairs were old. Seating for the public was available for a maximum of 30 persons and was not comfortable. A quarter of the hall was occupied by the cage for the Accused. At the end of the hall (opposite the entrance) the board of the Court was seated. The cage prevented the full view of where the Collegium and the Court Secretary were seated. As such, depending where the observer was sitting, in some cases it was not necessarily easy to hear the voice of the Presiding Judge. Further, the procedures of the interrogation of the victims / witnesses or any party took place in the space between the cage and the judges' table, so creating difficulties for the observation process. The cage also made it impossible to visualize how the Court Secretary was working.

The lawyers and Prosecutor were not sitting face to face. The Prosecutor was seated close to the Judge whereas the tables and chairs for the Defendant and his lawyer were standing opposite. Whenever the Defendant or his lawyers wanted to speak, they had to turn around in order to address their speech to the Judges.

The places for the public were located too far away to allow clear view or hearing of the full process. The number of chairs and tables for the public was unnecessary and took up extra space in the small, narrow courtroom. The unwillingness of the judges to use the microphones made it difficult to understand the speeches.

The room was served by three kinds of guards (dressed in three different uniforms). These kept an eye on people sitting in the courtroom, moving freely around the room to do so.

## **2.2. Procedure of transportation to court**

Before and after the trials, handcuffs were used on Jafarov. During the short breaks in the hearings, Jafarov was taken from the courtroom with handcuffs on. That fact was noticed by the observers. Some days he was woken early and taken into another room in which he would wait for a long time without any reason given before his transportation to the court.

The transportation was made in special vans that were uncomfortable. Jafarov did not file any complaint but this question was raised by another prisoners.

## **2.3. Placement in / out of the cage**

On the grounds of the motion of the defense lawyers (during the hearings of 10 February 2015) concerning letting Jafarov out of the cage, after deliberation, the Court announced that the motion would be satisfied and Rasul Jafarov was allowed to sit next to his lawyers in every future court hearing.

## **2.4. Public hearings**

Although the hearings were open to the public, some people had to remain outside the courtroom due to the lack of seating. At the same time a lack of microphones made it difficult to follow the process. The motion concerning a request to turn on the microphones went unsatisfied. Further, the location of the judges and parties, a large cage (blocking a part of the hall) did not give the chance of clear observation of the proceedings.

Before entering the courtroom, visitors were checked by the guards. Men were checked by male guards and women by female personnel of the court. Every visitor was checked personally, by hand, and bags were also checked. Mobile phones and IDs had to be left outside the courtroom. In some cases the visitors were asked to leave their bags. All belongings were returned after the proceedings.

## **2.5. Court impartiality/Equality of arms**

### *- Location of the parties*

The location of the parties, like the fact that the Prosecutor was seated close to the judges, the parties did not sit face to face, and the Prosecutor was seated beside the defense lawyers and Defendant, followed by the victims, breaks the standard of visual equality of the parties.

### *- Collegium of Judges*

The Collegium of Judges always opened the hearings by presenting the names of the judges and the parties, explaining the procedural rights of the Defendant and any another actors in the process. Leading was the President of the Collegium, while the remaining two judges had a passive role during the process, slumping unenthusiastically in their chairs. One of the judges was seen to be sleeping during the hearing (sitting with shut eyes).<sup>26</sup>

The following makes grounds to conclude that they were probably not independent in the decision-making process:

Most of the Defendant's motions were denied. The deliberation of most of the motions was postponed for future hearings. The judges in most cases did not give an explanation as to why they had rejected the motions.

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<sup>26</sup> Minutes /protocol of observations, 27 February, 2015

- *Recording of court session / minutes of the hearings*
- Under the common rule in Azerbaijan Courts, no audio-video record is taken. So, the minutes (protocol) are kept by the Court Secretary. The cage made it impossible to visualize how the Court Secretary worked, but in some moments she was absent during the hearings.
- *Motions of the Defendant and his counsel*

#### 27 January 2015

- To change the pre-trial detention of Jafarov to house arrest
- To let Rasul Jafarov out of the cage so he could sit next to his lawyers
- To allow microphones in the courtroom.

After deliberation, the Court announced that only one motion that of letting Jafarov out of the cage, would be satisfied. All other motions were denied. Rasul Jafarov was permitted to sit next to his lawyers.

#### 3 March 2015

Motion about questioning the wife of the owner of the rented office

Motion about a request for information from bank

The Prosecutor denied these motions. The motions were delayed for future hearings.

#### 31 March 2015

• Motion in relation to filing the documents from the organizations which were donors of projects of Jafarov and said they had no claims against Jafarov (the Court satisfied this motion).

Other important motions:

- about a call for an additional witness
- about reclamation of originals of payment documents in order to carry out an alternative examination
- about purpose of alternative calligraphy examination
- about changing the pre-trial detention with alternative measure.

These motions were denied.

#### **Victims and witnesses /Interrogation procedure<sup>27</sup>**

A number of victims and witnesses were presented during the case.

*Victims:* Ana Jabiyev, Seymur Verdizade, Ahmed Heybatov, Janagir Ahmadov, Nicat Imranli, Anaz Nazgibaz;

*Witnesses:* Gunay Ismaylova, Elnur Mamadli, Azer Gasimov, Shahlavat Namazov, Hamid Halilov, Ulvi Hasanov, Ali Mrazov, Tatiana Kruckina, Elchin Sadimov, Rufat Alasgarov, Javid Qurbanov, Parviz Azizov, and Rashad Shirinov (not present before the Court).

The status of “victim” was unclear for the victims themselves due the fact that all of them had received an honorarium paid for work done or as rent payment. Some of victims/witnesses stated that they had not met Jafarov before, as they had communicated via internet or mail, but all conditions, including payment, they said were executed by Jafarov or his representatives. They said all relevant contracts had been prepared accurately. During the hearings victims Anar Jabyeb and Ahmad Geybatov asked the Court to remove their status of victim or to change it to “witness,” but were unsuccessful. They also filed written motions before the Court to this end.<sup>28</sup>

<sup>27</sup>Materials of monitoring, 10, 24 and 27 February 2015; 5 and 12 March 2015

<sup>28</sup> Materials of monitoring, 27 February 2015; 14 April 2015



Among other things, all the witnesses of the prosecution were either unaware of why they were “victims” or testified that Jafarov never did them any harm.

- *Interrogation procedure of witness / victim*

At the beginning of the trial, the Presiding Judge always asked whether all witnesses who should be questioned had left the courtroom under the procedural rules. Later, after the interrogation, they were allowed to remain and some of them were presented again. The oath of each witness was made before the Court. They were warned about the criminal responsibility for giving false information and evidence. Before questioning all were explained their rights.

The interrogation process in general lasted 7-10 minutes for each person.

In some cases pressure was noticed by the observers during the court observations. The Prosecutor pressured victim Jabyev (due to controversy between the previous testimony given by him in the pre-trial investigation and the second one- the court testimony, hearing dated 27 January 2015). But the victim indicated the exact sum of money by providing relevant contract and paid tax. Also, he explained the reason he had been unable to remember the full amount of the sum before.

Anar Jabyev also recalled the fact that on 6 December 2014, he was invited for questioning. The Prosecutor met him and threatened him.<sup>29</sup>

- *Position of Rasul Jafarov*

Jafarov did not give a testimony during the proceedings as he had not pleaded guilty. The Court used the testimonies made by him before, in the Prosecutor General’s Office on 2 August 2014, and 9 August 2014. Jafarov answered all the questions asked by the Judge and observed his work process in detail.<sup>30</sup>

In general, he said that he was paying all taxes and he did not recognize the charges against him. He added that he did not understand the charges against him and these charges were illogical.

All relevant agreements were signed, signatures done, and the office rent was paid to the wife of the landlord. All this documentation was presented by Jafarov on his own. The projects and grants he had were registered in the relevant administrative bodies. He clarified that there was no legal requirement to register grants given to physical persons. He further explained that, due to the legislation of Azerbaijan, the organization could not be registered and as such he was limited in activities and so also worked for another organizations. He did not participate in any unlawful activities, he said.

- *Jafarov’s last speech at the Court, April 15 2015*

Jafarov’s last speech at the Court was very brief but quite appealing. The speech had three main points:

He spoke regarding the so-called “victims.” There were five victims in total. He said that he knew only one of them, Ahmad Heybatov, in person as they have been good friends since childhood. He had a working relationship with Nicat Imran, video maker, and Anar Naghilbaz, a rap singer. He said the other two victims, Jahangir Ahmadov and Seymur Verdizade, were unknown to him. Jafarov’s point in talking about the victims was to present a counter argument to the Prosecutor’s allegation, as if the victims had deliberately chosen to protect Jafarov by testifying in his favor due to their personal relationship. All the victims mentioned in their testimonies that they had nothing against Jafarov.

Jafarov also mentioned that he had no thought of revenge. He said that the Court could restore the shattered hopes of people by issuing a just verdict and ensuring justice.

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<sup>29</sup> Materials of observation, 10 February, 2015

<sup>30</sup> Materials of monitoring, 10 February, 2015

Jafarov said that his case was not a legal but a political one. The Prosecutor said that his case could have an extenuating character if Jafarov pleaded guilty for the crimes he had committed. "I cannot plead guilty for something I have not done," said Jafarov. Jafarov repeated that justice could only be restored if the Court made a just decision about his case.

At the end of the trial (16 April 2015) Jafarov said that this court ruling was a political decision, the materials he had presented to the Court as evidence had not been considered and the Judge had issued the final verdict by only referring to the indictment. He called on all the human rights activists and international organizations to defend his rights.

- *Position of the lawyers*

The lawyers said that as Jafarov was fined by the Revenue Department and he was also arrested, the arrest counted as a double punishment for him. The lawyer said that all criminal charges against Jafarov should be dropped. Additionally, he repeated that those identified as victims should have never been granted that status as they had not suffered any damage. Further, the position of both lawyers was that all charges were false (the basic arguments were the same as Jafarov mentioned, see the materials of the protocol of 11 April, 2015).<sup>31</sup>

- *Position of the Prosecutor*

The Prosecutor stated, during the pre-trial investigation and before the Court, that Jafarov had unlawfully used the grant money given by donors, abused the law and started an illegal entrepreneurship.

The Prosecutor in his final speech requested nine years of imprisonment for Jafarov.

- 179.3.2 -Misappropriation of a large amount of money
- 192.2.2- Illegal business activity and misappropriation of large sums of money
- 213.1- Tax evasion
- 308.2- Abuse of power
- 313 - Service forgery

### ***Verdict***

Jafarov was sentenced to six and half years of jail term. The court ruling was made based on the following provisions and charges:

The Court did not analyze the materials presented as evidence by the lawyers. The Judge even said that by watching the CD, Jafarov's side had presented to the Court as evidence, the Court could determine that Jafarov had misappropriated huge sums of money. The CD basically described all the project activities the Human Rights Club had implemented before Jafarov's arrest.

## **2.6. Right to an effective defense**

- *To be informed about charges in the correct manner, clearly*

The Defendant was not informed about the charges in accordance with international standards. He was not promptly informed about the grounds of his arrest. Further, he received no clear explanation as to the meaning of the charges.

Jafarov did not plead guilty. First, he considered all accusations illogical and irrelevant. The Defense agreed with him and filed a motion to have the accusations explained. The Prosecutor responded that all accusations

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<sup>31</sup> Materials of monitoring, 14 April 2015

were in accordance with the law. The Presiding Judge, Eldar Ismayilov, stated that court proceedings would show which accusation is relevant to which article.

- *Lawyer of his own choosing*

The Defendant was presented by a lawyer of his own choosing. He had no lawyer during the first interrogation process in the Prosecutor's Office.

- *To have adequate time for the preparation of his position*

As was clarified by the different lawyers and NGO activists, the time given for the meeting with the lawyer in prison is limited. The prisoner has a chance to meet with one of the lawyers (if he/she has two or more, he can only meet with two). This raises the question of inadequate time for the legal consultations and preparation of position before the Court.

- *Confidentiality in communication with the counsel / limited access*

During the hearings, the Defendant and defense counsel were able to consult with each other. The guards sometimes stood close to the bench of the party, as if to hear the conversations between the lawyers and the Defendant and, as such, the party was limited in its freedom to speak freely.

Jafarov was also limited in consulting his lawyers when placed in the cage in the courtroom.

- *Access to investigation materials*

The Defendant and his lawyers had problems with access to the materials in the period of pre-trial stage and trial investigation. The counsel of the Defendant was limited in receiving correct protocol.

- *To have adequate time for the preparation of his position*

As was clarified by the different lawyers and NGO activists, the time given for the meeting with the lawyer in prison is limited. The prisoner has a chance to meet with one of the lawyers (if he/she has two or more, he can only meet with two). This raises the question of inadequate time for the legal consultations and preparation of position before the Court.

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Jafarov was also limited in consulting his lawyers when he was placed in the cage in the courtroom.

- *Access to investigation materials*

In the current case the Defendant and his lawyers had problems with access to the materials in the period of pre-trial and trial investigation. As such, the party was limited in their right to effective remedy. The counsel of the Defendant was limited in receiving correct protocol.

## **Relevant law**

### **Criminal Procedure Code of Azerbaijan**

#### **Article 91.5.22.**

**91.5.** The accused shall exercise the following rights in accordance with this Code:

**91.5.1.** to know what he is accused of (content, factual description and legal classification of the charge) and to receive a copy of the corresponding decision immediately after the charge is brought, the accused is remanded

in custody or the decision on the choice of restrictive measure is announced;

**91.5.2.** To receive written notification of his rights from the person who detained or arrested him or from the preliminary investigator, investigator or prosecutor;

**91.5.3.** To acquaint himself with the record of detention and arrest immediately after it is drawn up and to make observations for inclusion in the record;

**91.5.4.** To have defence counsel from the time of the arrest or the announcement of the charge;

**91.5.5.** To have the help of defence counsel free of charge;

**91.5.6.** to inform his family, relatives, home, workplace or place of study immediately after detention, by telephone or other means;

**91.5.7.** To choose his defence counsel independently, to dismiss counsel and to conduct his own defence if he waives the right to defence counsel;

**91.5.8.** To have unlimited opportunities and time to meet his defence counsel in private and in confidence;

**91.5.9.** To be questioned at his own request with his defence counsel present;

**91.5.10.** To give statements, not to incriminate himself or his relatives and in general to refuse to testify as well as to give or refuse to give statements concerning the charge against him;

**91.5.11.** To give statements in his mother tongue or in a language he knows;

**91.5.12.** To have the help of an interpreter free of charge;

**91.5.13.** To raise objections and to submit applications;

**91.5.14.** To participate in investigative or other procedures or to refrain from participating in them unless this is prohibited by another provision of this Code;

**91.5.15.** To participate in investigative or other procedures conducted at his own request with the help of his defence counsel;

**91.5.16.** To present evidence and other material for inclusion in the case file and examination by the court;

**91.5.17.** To plead guilty or not guilty;

**91.5.18.** To object to the acts of the prosecuting authority and to have such objections noted in the records of investigative and other procedures;

**91.5.19.** to acquaint himself with the records of investigative or other procedures in which he takes part, to make observations on the accuracy and completeness of the written record, and when participating in investigative or other procedures and in court hearings, to require the inclusion of the necessary circumstances in the appropriate record;

**91.5.20.** To take cognisance of decisions on expert reports and of the experts' opinions;

**91.5.21.** To take cognisance of documents presented to the court by the prosecuting authority confirming that the arrest and detention on remand are lawful and justified;

**91.5.22.** To take cognisance of the case file from the end of the investigation or the discontinuation of the criminal proceedings and to make copies of the necessary documents relating to it;

**91.5.23.** To object to the discontinuation of the criminal proceedings without grounds of acquittal;

**91.5.24.** To demand a public hearing within a reasonable time;

**91.5.25.** To participate in court hearings at first instance and on appeal and in the examination of the case file;

**91.5.26.** To participate in the selection of jurors in the court hearing at first instance;

**91.5.27.** When conducting his own defence, to make an introductory statement (pleading either guilty or not guilty of the charge against him and stating whether or not he recognises the civil claim), to speak and to reply at hearings of first instance and appeal courts;

**91.5.28.** To make a final statement in court;

**91.5.29.** to be informed by the prosecuting authority of the decisions which affect his rights and legal interests and, on request, to receive copies of those decisions, including those concerning the choice of restrictive measure, the conduct of investigative or other coercive procedural measures, the charging of the accused and the announcement of the charge, and copies of the indictment, civil claim, judgment, other final decisions of

the court and complaints and appeals to the appeal courts and the Supreme Court;

**91.5.30.** To lodge complaints against the decisions and acts of the preliminary investigator, investigator or prosecutor;

**91.5.31.** To appeal against the judgment and other decisions of the court to the court of appeal and the Supreme Court, or to the latter on additional appeal, and to receive copies of those decisions;

**91.5.32.** To acquaint himself with the record of the court hearing and to add observations to it;

**91.5.33.** To withdraw any complaint lodged by himself or his defence counsel;

**91.5.34.** To be reconciled with the victim;

**91.5.35.** To express objections to circumstances made known to him through information brought to his attention by the prosecuting authority or through complaints made by the other parties to the criminal proceedings;

**91.5.36.** to participate in appeal court hearings and Supreme Court hearings on appeal, on additional appeal and on the basis of newly discovered facts, further to a complaint of his own, if he is not held on remand and if he objects to a complaint by another party to the proceedings and to take part in the court's examination of the case file;

**91.5.37.** To be informed of appeals and complaints relating to the case and to raise objections to them;

**91.5.38.** To express opinions on applications and suggestions by other parties to the criminal proceedings as well as on matters being decided by the court;

**91.5.39.** To object to unlawful acts of the opposite party to the criminal proceedings;

**91.5.40.** To be reimbursed for costs incurred during the proceedings and receive compensation for prejudice caused by unlawful acts of the prosecuting authority;

**91.5.41.** To be acquitted if the charge is not proved;

**91.5.42.** To exercise the other rights provided for in this Code.

**91.6.** When independently conducting his own defence, the accused shall exercise all the rights of his defence counsel as provided for in this Code, as far as is possible in his position.

**91.7.** The accused's exercise of or refusal to exercise his rights shall not cause him to suffer prejudice or detriment. Except where he intentionally names a person in the knowledge that he was unconnected with the offence, no liability shall accrue to the accused on account of his statements and submissions.

**91.8.** The accused shall fulfil the following duties in accordance with this Code:

**91.8.1.** To attend as required by the prosecuting authority;

**91.8.2.** To submit to a search and body search when detained;

**91.8.3.** To be medically examined, to have fingerprints taken, to be photographed, to have samples of his blood and body fluids taken;

**91.8.4.** To be examined;

**91.8.5.** To submit to an expert opinion;

**91.8.6.** To comply with the instructions of the preliminary investigator, investigator, prosecutor or the president of the court;

**91.8.7.** To not leave the courtroom during the hearing without the permission of the president, until a break is announced;

**91.8.8.** To observe the rules of court;

**91.8.9.** To fulfil the other duties provided for in this Code.

**91.9.** The rights of an accused person who is under age or lacks legal capacity shall be exercised in his stead by his legal representative in accordance with this Code.

## **Article 219. The end of the investigation**

**219.1.** The investigation shall end when it is decided to send the case to the court so that the indictment may be drawn up and compulsory measures of medical nature may be taken, or when it is decided to discontinue the criminal proceedings.

**219.2.** In criminal cases subject to compulsory investigation, after the performance of investigative procedures which cannot be delayed and in any case within 10 (ten) days of the commencement of criminal proceedings, the preliminary investigator shall transfer the criminal case to the investigator under the terms of the relevant decision. A copy of this decision shall be sent within 24 hours to the prosecutor in charge of the procedural aspects of the investigation. The Accused, his legal representative and defense counsel and the victim, civil party, Defendant to the civil claim and their representatives who have participated in the initial investigative procedures shall be informed that the case has been transferred to the investigator.

## **Article 284. Presentation of the case files before drawing up e indictment**

**284.1.** When the investigator deems that there is sufficient evidence to draw up the indictment and transfer the case to the prosecutor in charge of the procedural aspects of the investigation, he shall:

**284.1.1.** Inform the Accused, his Defense counsel, the victim, the civil party, the Defendant to the civil claim or their representatives of the end of the investigation;

**284.1.2** Specify a place and time for the parties to the criminal proceedings to take cognizance of the case file.

**284.2.** The investigator shall make arrangements for the victim, civil party, Defendant to the civil claim or their representatives to take cognizance of the case file, on request, and for the accused and Defense counsel to be able to do so without having to make a request.

**284.3.** If the counsel for the Accused or the representatives of the victim, civil party or Defendant to the civil claim cannot attend at the appointed time, the investigator shall extend the arrangements for taking cognizance of the case file for 5 (five) days. If Defense counsel or the representative fails to attend within this period, the accused shall be offered the opportunity to appoint, or reach an agreement with, another Defense counsel, and the victim, civil party or Defendant to the civil claim shall be given the opportunity to appoint another representative.

## **Article 287. Filing of applications after the presentation of the case file**

**287.1.** After the presentation of the case file the investigator shall ascertain whether the Accused, Defense counsel, the victim, the civil party, the Defendant to the civil claim or their representatives wish to file applications concerning the conduct of additional investigative procedures or the taking of new procedural decisions. At their request, parties to the criminal proceedings may be allowed 48 hours to prepare and file a written application.

### **2.8. Conclusion regarding hearings at the City Court**

- Formally, the Court followed all stages of trial proceedings. The victims were questioned, as were the witnesses. The motions were deliberated. The opportunity of debate and last speech was given to the parties. The Court deliberated the motions and evidence. The Court studied the case materials but failed to analyze the materials presented as evidence by the lawyers also the evidence created by itself (such as the materials of interrogation of the witnesses and victims). The Judge even said that on watching the CD, Jafarov's side had presented to the Court as evidence, "we can say that Jafarov misappropriated huge sums of money." The CD basically described all the project activities Human Rights Club had implemented before Jafarov's arrest. It is clear that the trial was based on unfounded charges and that there was no

evidence of Jafarov's guilt. The Court **was not independent in the decision making process** and there was a clear **lack of impartiality and equality of arms**;

- **Trial hearings were not always public**;
- The Defendant had issues with **confidentiality in conversation** with his lawyers, he had limited access to the materials at times;
- Jafarov **was not promptly informed** about the grounds of his arrest. Further, no clear explanation was given of the meaning of charges;
- There is a question regarding conditions in the prison;
- The **transportation procedure** for court hearings, handcuffing, and placement in the cage broke the standards of the European Convention regarding the presumption of innocence vs. security requirements.
- The burning question is how necessary the pre-trial detention of Jafarov in prison conditions (as a restrictive measure) was. Formally, the legislative system of Azerbaijan provided the possibility of detention for a person with grave charges. In Jafarov's case, due to the weak justifications for his charges, alternative measures could have been used.

### **3. Hearings in the Appellate Court<sup>32</sup>**

#### **3.1. General information about the proceedings**

The hearings took place on July 21 and 31, 2015.

Both hearings were held by a collegium of three Judges, chaired by Judge Hasan Ahmadov, the Presiding Judge, with Mirpasha Huseinov and V. Murzagulov (Address: Zahid Khalilov Street 540, Baku, Azerbaijan, 1073). The first hearing lasted for 15 minutes, the second took around two hours.

The Defendant was represented by lawyers Fariz Namazli and Alibaba Rzayev (lawyers of his choosing). The victim Ahmad Heybatov was also present at the second hearing with a complaint in relation to the fact he did not consider himself a victim.

After 5 minutes of deliberation, the Judges of the Baku Appellate Court amended the verdict passed by the Court of Grave Crimes, dropped the tax evasion charge against Rasul Jafarov after he had paid his tax debt, and reduced his sentence by three months, bringing it down to six years and three months.

#### **3.1. Conducting hearings in public / Support from society**

On 21 July 2016 only family members (mother, brother, grandfather) and lawyers were permitted to participate in the hearing. It was crowded at the entrance of the court and no one else was allowed to enter until Rasul Jafarov's hearing had ended.<sup>33</sup>

At the second hearing the public was allowed to attend, and observers from the German Embassy (2 persons), British Embassy (2 persons), and Tamar Avaliani from FIDH were also present during the hearing of the case.

The media was present during the second hearing.

#### **3.3. Courtroom**

The courtroom was newly-renovated. The cage was made partly from glass and partly from wood. The room was well-lit and equipped with technology and air conditioning. The courtroom was designed for about 30 people (benches for public and media).

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<sup>32</sup> This report is based on the materials of the monitoring process of Human Rights House-Tbilisi

<sup>33</sup> Information given later by the members of Jafarov's family and his lawyers.

Some of those who wanted to attend were unable to do so due to the limited places inside.

### **3.4. Court impartiality / Equality of arms**

#### *- Location of the parties and Collegium*

The location of the parties broke the standard of visual equality of the parties. The Prosecutor was seated close to the judges; the parties did not sit face to face; after the Prosecutor defense lawyers and Defendant were seated; followed by the victim.

The Defendant was in a glass cage made of wood up to one meter from the ground and the remainder made from glass. The glass cage was guarded by two policemen.

The public was not able to hear Jafarov without a microphone and speakers.

#### *- Lawyer of his own choosing*

The Defendant was presented by the lawyer of his own choosing.

#### *- Confidentiality of communication with the counsel /limited access*

During the hearings the Defendant and defense counsels had no opportunities to have consultations together. Due to the fact that he was sitting in the cage, Jafarov's contact with his lawyers was limited.

#### *- Motions of Rasul Jafarov and his counsel*

- release Rasul Jafarov from the glass cage and allow him to sit by his lawyers (asked for twice);
- the Defense also motioned to replace the arrest as a restrictive measure to home arrest, as there were no grounds for arranging or extending arrest;
- defense counsel Fariz Namazli filed a motion to drop the charge under Article 213 and requested full acquittal of the Defendant as he had already paid more than 6000 Manats to cover the tax debt and he no longer owed anything to the state budget;
- Defense counsel Alibaba Rzayev highlighted that all five accusations were based on the same amount of money and this is not possible because of the content and meaning of articles. He underlined that charges against Rasul were legally baseless. Jafarov had been found guilty under five separate articles of the Criminal Code for the single amount of money. The Court had claimed that this amount, i.e. 150,000 AZN, constituted illegal income but at the same time, they claimed that Jafarov had misappropriated these funds. They also stated that Jafarov was liable for taxes on these allegedly misappropriated funds;
- The Prosecutor motioned for the Court to remove the tax evasion (Article 213.1) from the accusation, which was satisfied by the Court.

#### *- Position / behavior of the Prosecutor during both hearings*

Public Prosecutor Seyhun Azadaliyev was very calm. He rejected the arguments of the Defense (as the Prosecutor said, the Court found all motions groundless and dismissed them all) and filed a motion before the Court to remove tax evasion (Article 213.1) from the accusation, which was satisfied by the Court.

#### *- Position of Rasul Jafarov at the Appellate Court*

Rasul Jafarov remarked that he had cooperated with the Prosecutor General's Office from the beginning and had presented all requested documentation.

Jafarov said that it was absolutely illogical when a person has a misappropriation charge based on the reason that the funds in question were not transferred to his account by a number of different international organizations. Money was transferred to the registered organization in the Ministry of Justice (OSCE Baku



Office; the Delegation of the Counsel of Europe; the Representative Office of the Open Society Institute; and the British and Norwegian Embassies still remaining in Azerbaijan). It was concretely mentioned that the Defense presented before the Court of Grave Crimes donors' letters confirming that the full value of the grants had been spent according to the grant agreements. Jafarov also mentioned that before 2014 there was no obligation for NGOs to register grants with the Ministry of Justice and indicated that after 2014, the Human Rights Club (HRC) had ceased functioning at all. All sums of money in 2014 and after were transferred by donors to another registered (in the Ministry of Justice) organization at which Jafarov was merely an employee. The Court did not take into consideration any of the above substantiated arguments.

Rasul Jafarov commented on his decision to pay the tax bill. He noted that he had paid this bill in order to secure his release from criminal responsibility, but also to show himself willing to engage in a dialogue with the authorities.

Jafarov also mentioned that the Chairman of the Counsel of State Support to NGOs, Member of the Parliament Azay Guliyev, stated in an interview that NGOs can function without registration. Additionally, there is a practice of the European Court of Human Rights: in CASE OF ISMAYILOV v. AZERBAIJAN (Application no. [4439/04](#))17/04/2008 which signified that NGOs in Azerbaijan can function without registration.

- *Position of Defense lawyers*

The Defense added that other persons arrested on similar charges had been released on conditional sentences, and in this concrete case the Court's refusal to apply this measure constituted discrimination.

- *Position of Ahmad Heybatov (victim)*

Ahmad Heybatov, who had been recognized as a victim by the investigative agency, also submitted an appellate complaint, arguing that he did not consider himself a victim and did not understand why the investigative agency gave him this status. He asked the Court to overturn the judgment delivered on 16 April 2015 and acquit Rasul Jafarov.

### **3.5. Court Collegium/Deliberation process/verdict**

The Court Collegium did not interrupt the parties as they gave their explanations (the explanations were not long). All the motions (aside from the motion in relation to dropping the charge under Article 213) of the Defendant were denied. The decision in relation to the motions were made without leaving the room and without deliberation procedure. The Judges in most cases gave no explanation as to why they had rejected the motions.

- *Motions of the party of defense*

The Defense lodged motions asking for the release of Jafarov from the glass cage and for him to sit by his lawyers. The Court dismissed the motion and scheduled the next case examination for 31 July 2015.

During the second hearing, the Defense lodged motions asking for the release of Rasul Jafarov from the glass cage so that he could take a seat by his lawyers. The Defense emphasized that the use of glass cage is inhumane and violates the right to effective defense, equality, right to protection of human dignity, presumption of innocence and results in issues of court impartiality. The motion was rejected by the court for the second time. The Court found other motions groundless and dismissed them all (as the Prosecutor expressed in his opinion). Only the motion before the Court to remove tax evasion (Article 213.1) from the accusation was satisfied by the Court.

The last deliberation before making the verdict was not long. After 5 minutes of deliberation, the Judges of Baku Appellate Court amended the verdict passed by the Court of Grave Crimes, dropped the tax evasion

charge against Rasul Jafarov after he had paid his tax debt, and reduced his sentence by three months bringing it down to six years and three months.

### 3.6. Conclusion regarding the hearing at the Appellate Court

- The court formally followed all necessary stages of trial proceedings. The hearings were mostly open; the Court deliberated the motions and evidence. The Court listened to the positions of the parties. But the Court did not analyze the materials presented as evidence by the lawyers or the evidence they had before. The Court refused to start a new court investigation process. The Court did not pay enough attention to the question of changing the detainment of the Defendant Rasul Jafarov as a restrictive measure to home arrest. Also, it did not pay attention to the documents and arguments of the parties in relation to the innocence of the Defendant. As such, the Court **was not independent in the decision making process** and the lack of impartiality and the equality of arms was evident. It is clear that the trial was based on unfounded charges and that there was no evidence of Jafarov's guilt.
- **Public hearings** were not provided fully. The public was limited to attending just the first hearing. During the second hearing some people were not permitted to enter the courtroom due to the lack of benches;
- The Defendant had problems with **confidentiality of conversation with his lawyers**, as during the process **he was placed in a glass cage and had no access to consultations with his lawyers without Court permission.**
- The Defendant was not in **the position to hear everything clearly and participate normally** due to the fact of being placed in the glass cage;
- As the monitoring process inside the courtroom started a little after the hearings opened, the moment of transportation of the Defendant to the court could not be observed (handcuffed or not).

## 4. Supreme Court <sup>34</sup>

### 4.1. General information about proceedings at the Supreme Court

The hearings took place on February 16, 2016 and lasted one hour, starting at 10.12, with a break from 10.12-10.24 and ending at 11.15. The first aimed to take the Defendant to the court and the second to make a verdict.

The hearings were held by the collegium of three Judges, chaired by Judge Fakhid Karymov, with Imran Gadjigaybov and Gyuzal Rzaeva (Address: Yusif Safarov Street, 14, Baku, Azerbaijan).

The Defendant was represented by lawyers: Fariz Namazli and Alibaba Rzayev (lawyers of his own choosing). The Prosecutor was Rizvan Shammadov.

The Supreme Court upheld the decision of the Appellate Court.

### 4.2. Entry to the court and courtroom

The observer could easily enter the court building; the guards did not examine her but took her mobile phone. The observer was allowed to take her handbag in.

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<sup>34</sup> Materials of the monitoring, 16 of February, 2016

## **Courtroom**

There was a glass cage in the middle of the courtroom. The Courtroom was newly-renovated, of about 60 m-70 m. There were about 80 benches for the public. The room was equipped with computers and microphones.

### **4.3. Public hearings**

The public was not limited in attending the hearings. There were many empty places in the courtroom. Representatives of the German Embassy, media “Turan” and “Voice of America” were presented in the courtroom.

### **4.4. Lawyer of his choosing**

He was represented by a lawyer of his choice.

### **4.5. Communication with the advocate/placement of the Accused**

Rasul Jafarov was sitting in the glass cage on the left side of Judges. During the break the audience had chance to talk to Rasul.

### **4.6. Court impartiality / Equality of arms**

#### *– Location of the parties and Collegium*

The lawyer and Prosecutor were seated together on the right of the Court Collegium. The Prosecutor was closer to the Judges. Rasul Jafarov was sitting in the glass cage on the left side of Judges. The court secretary was sitting next to the cage. Two guards remained in the courtroom.

#### *– Court Collegium*

The Court Collegium did not interrupt the parties while giving their explanations (the explanations were not long). The Court Collegium reminded the audience of the rules of conduct in the courtroom as well as sanctions for the violation of order. The Judge asked Rasul and the Prosecutor whether they had read the cassation lawsuit; whether they had received copies of it and both parties confirmed they had.

#### *– Position of the lawyers*

The lawyer spoke briefly about the inconsistencies in the charges. The lawyer underlined the illegality of the search, which was conducted by unauthorized persons, and the issue of inadmissibility of alternative expertise. He spoke about the rejected number of defense motions. Considering these circumstances, the lawyer requested they acquittal of Rasul Jafarov. The Presiding Judge asked a few questions to the lawyer: namely about the search, and reminded him of the law about expertise, which states that the results of alternative expertise are not considered by the court only the conclusion of the state forensic expert. The Judge inquired why they had not hired a private expert as it is not prohibited by law; the lawyer said it was impossible.

#### *– Rasul's speech*

Rasul spoke about the entire court hearing in his case. He noted that the money that the charge under Article 179 of the Criminal Code was referring to, belonged to donors and not to the State. In accordance with the Criminal Code, misappropriation or embezzlement under Article 179 may happen of only state property. Since it was not state property, there were no signs of crime and the accusation was absurd. Rasul noted that he tried to make his activities transparent and open for society, clearly demonstrated in his reports to donors. Moreover, donors had no complaints about him. Rasul spoke about the registration of the grants, and highlighted that he had applied several times to the Ministry of Justice for registration in written form but received no answer.

The Judge asked him whether all the grants should be registered or not. Rasul said it was obligatory for legal entities, yet pointed out that he was individual. Finally, he noted that both instances of court considered the evidence in the case politically. He requested full acquittal.

– *Position of the Prosecutor*

The Prosecutor did not agree with the cassation appeal and requested the Court to uphold the judgment of the Appellate Court.

#### 4.5. Deliberation of cassation motion / verdict

The last deliberation on the verdict was very brief. At 11:06 am the Court left the courtroom to make a decision. A break was announced. After 10 minutes of deliberation, the Judges of the Supreme Court amended the verdict. The Supreme Court upheld the decision of the Appellate Court. The decision was declared in brief.

#### 4.6. Conclusion regarding the hearing at the Supreme Court

- The Court formally followed all necessary stages of the trial proceedings. The hearings were open. The Court listened to the positions of the parties but the Court did not analyze the materials presented as evidence by the lawyers or the evidence they had before and did not pay enough attention to the documents and arguments of the parties in relation to the innocence of Rasul Jafarov. The court **was not independent in the decision making process. The lack of impartiality the equality of arms** was observed; it is also clear that the trial was based on unfounded charges and that there was no evidence of Jafarov's guilt;
- **Trial hearings were public.**
- The accused was limited in ability to have **conversation/consultation with his lawyers**; during the process **he was placed in a glass cage**;
- The Defendant was not in **a position to hear everything clearly and participate normally** due to him being in the glass cage;
- The moment of transportation of the accused to the court could not be observed, so conclusions cannot be made.