

Final Report on the Case of Khadija Ismayilova

(Pre-trial Period, Proceedings in the Baku Court on Grave Crimes, the Baku Court of Appeal, and the Supreme Court of Azerbaijan)

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I. General information

1. Summary

Khadija Ismayilova was arrested on December 5, 2014 on the charge of allegedly driving someone to attempt suicide (Article 125 of the Criminal Code of Azerbaijan). On February 13, 2015, the General Prosecutor's office brought further charges of embezzlement (Article 179.3.2), illegal enterprise (Article 192.2.2), tax evasion (Article 213.1) and abuse of power (Article 308.2) against her. On February 23, 2015, a closed-door trial at the Binaghadi District Court in Baku found Ismayilova guilty of criminal libel against Elman Hasanov, and Ismayilova was fined 2,500 manat. On September 1, 2015 the Baku Court on Grave Crimes sentenced Ismayilova to 7 1/2 years in prison on charges of embezzlement, illegal enterprise, tax evasion, and abuse of power. The Court acquitted Ismayilova on the charge of driving someone to attempt suicide. On November 25, 2015 the Baku Court of Appeal upheld the verdict of the Court on Grave Crimes. On May 25, 2016 the Supreme Court of Azerbaijan ruled to reduce Ismayilova's sentence to a suspended sentence of three and a half years, and she was freed on probation under conditions that confined her to Baku and barred her from any professional activity for two years.

The charges against Khadija Ismayilova were fabricated. On the day prior to Ismayilova's arrest, the Azerbaijani government released a 60-page manifesto written by Presidential Chief of Staff, Ramiz Mehdiyev. Mehdiyev singled Ismayilova out as "the best example" of journalists working against the government, writing, "She puts on anti-Azerbaijani shows, makes absurd statements, openly demonstrates a destructive attitude towards well-known members of the Azerbaijani community, and spreads insulting lies ... There is no need to prove that the provision of false information is the same as working for the foreign secret service. This is treason."

The next day, December 5, 2014, Ismayilova was summoned to the Baku City General Prosecutor's office for interrogation. Upon arrival, she was detained and informed that the General Prosecutor had issued an order for her arrest on the charge of driving a person to attempt suicide. The person in question was journalist Tural Mustafayev, who claimed that Ismayilova became jealous over Mustafayev's relationship with a girl and began to post negative things about him on social media and later blocked his re-hiring by the radio station Radio Free Europe/Radio Liberty (RFE/RL). On the evening of December 5th, the Sabail District Court in Baku sentenced Ismayilova to two months of pre-trial detention. The following day, Ismayilova was transferred to the Kurdakhany pre-trial detention center, approximately 30 kilometers outside Baku.

*Ismayilova was detained **in absence of reasonable suspicion** that she had committed any criminal offenses. No order was shown to her and no supporting documents were provided. **She wasn't informed***

*promptly about the grounds for her arrest. Further, **the meaning of the charges was not explained clearly to her** in spite of her request to have it explained.*

*On December 6, 2014 an illegal search was conducted in Ismayilova's home by about 15 law enforcement officials and other employees of the General Prosecutor's Office. 58 DVDs, a modem, and several business cards belonging to Ismayilova were confiscated from her home without any relevant notes being made. Then, on December 26, 2014 investigators from the General Prosecutor's office, accompanied by armed police officers, raided and searched the offices of Radio Azadliq, the Azerbaijani service of Radio Free Europe/Radio Liberty (RFE/RL) where Ismayilova worked. Staff members were summoned for questioning, and their computers and documents were confiscated. By such illegal activities, Ismayilova and her lawyers were **deprived of the opportunity to have adequate facilities for the preparation of her defense**. It was impossible for the Defense to prove Ismayilova's innocence to the best of its ability due to the fact that so much had been confiscated from her.*

*The Defendant had the opportunity to defend herself in person. She was given **lawyers of her own choosing**. However, on March 12, 2015 Yalchin Imanov, a lawyer representing Ismayilova, was disqualified after two criminal cases against Ismayilova were merged. Imanov was cited as a witness in one of the two criminal cases, which disqualified him from acting as her legal representative in the other.*

*Ismayilova had **problems with access to the case materials** during pre-trial and trial investigation. Also under question is her **having adequate time for legal consultations and the preparation of her position** in the pre-trial period. Contrary to law, Ismayilova's family and lawyers were repeatedly denied regular visits with Ismayilova in prison.*

***The publicity of the hearings** was not provided fully in either the City Court or the Appellate Court. The unwillingness of the judges to use microphones made it difficult to hear the speeches. The motion to turn on the microphones was dismissed several times, and the judges repeatedly shut off Ismayilova's microphone while she was attempting to speak. Despite the fact that the hearings were formally open to the public, people who came often had to remain outside the courtroom due to lack of benches, or were denied entrance into the courtroom — explained through false reasoning or simply not explained at all. The location of the judges and the parties and a large glass cell (covering a significant part of the courtroom) did not allow for full observation.*

*The **transportation procedure** for the court hearings, with the Defendant handcuffed and then placed in the dock, broke the standards of appearance before the Court as stated in the European Convention (regarding presumption of innocence vs. security requirements). In the Court on Grave Crimes,*

Ismayilova's lawyers submitted multiple petitions so that Ismayilova could leave the glass cell and sit beside her lawyers. The court rejected the petitions. While Ismayilova was in the caged dock, she was restricted from consulting with her lawyers as needed.

***Confidence of communication** with the counsel was limited and often not provided. Guards were often positioned close to the bench of the defense, so as to hear the conversations between lawyers and the Defendant. As such, the defense was limited from speaking freely.*

***Equality of arms** was not provided during the trial period or prior to it. The Prosecution had more privileges before the Court than the Defense. Most of the motions presented by Ismayilova and her lawyers were rejected. The judges failed to give explanations as to why they rejected the motions filed by the Defense. The rule “Everyone charged with a criminal offense shall be presumed innocent until proved guilty according to law” was violated.*

*The Court **was not independent in making a decision and the lack of impartiality was apparent.** The Court passed formally through all necessary stages of the trial proceedings and yet did not analyze material presented as evidence by the lawyers. The charges were based on the false testimonies of victims who were pressured by investigators, and the desire expressed by certain witnesses to retract allegations that they had made under pressure was ignored by the Court.*

Thus, the charges against Khadija Ismayilova were fabricated and the court reviews were simply formalities.

On May 25, 2016 the Supreme Court of Azerbaijan ruled to reduce Ismayilova’s sentence to a suspended sentence of three and a half years, and she was freed on probation under conditions that confined her to Baku and barred her from any professional activity for two years.

It is clear that the trial was based on unfounded charges and there is no evidence of Ismayilova's guilt.

2. Introduction to Khadija Ismayilova

Khadija Ismayilova is a leading independent reporter and human rights advocate in Azerbaijan. After graduating from Baku State University in 1997 with a degree in philology, she spent the next ten years working as a journalist for a number of local and foreign media outlets, including the Russian-

language newspaper Zerkalo (Mirror), Caspian Business News, and the Azerbaijani edition of the Voice of America.

From 2008-2010, Ismayilova was the head of the Azerbaijani branch of Radio Free Europe/Radio Liberty (RFE/RL), Radio Azadliq. In order to focus on her investigative reporting, she stepped down as head in 2010 but continued on as a reporter and host of the popular Internet radio program, "After Work." Since 2010, Ismayilova has published a series of groundbreaking articles exposing the corruption and business interests of President Ilham Aliyev and his family. Authorities have never publicly commented on these pieces.

Ismayilova received the Gerd Bucerius Free Press of Eastern Europe Award by Zeit-Stiftung on May 24, 2012, the Courage of Journalism Award by the Washington-based International Women's Media Foundation on October 24, 2012, and the Global Shining Light Award on October 14, 2013. In 2015, while Ismayilova was detained, she was chosen to be the recipient of the annual PEN/Barbara Goldsmith Freedom to Write Award, as well as the winner of the Anna Politkovskaya Award for reporting on corruption. In November 2015, Ismayilova became one of six people to receive the Alison Des Forges Award for Extraordinary Activism from Human Rights Watch. Ismayilova was also the 2016 recipient of the UNESCO/Guillermo Cano World Press Freedom Prize.

3. Facts of the case

On May 13, 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 Articles 308.1 (abuse of power) and 313 (service forgery) of the Criminal Code of Azerbaijan (the alleged basis for the case is "irregularities found in the activities of a number of NGOs of the Azerbaijan Republic and branches or representative offices of foreign NGOs").

Ismayilova, the target of an orchestrated smear campaign in 2012, was detained and interrogated multiple times throughout 2014 amid growing accusations from pro-governmental sources that she was betraying the Azerbaijani government and leaking state secrets. Ismayilova began anticipating her own arrest long in advance. On February 19, 2014 she posted a list of requests to her supporters in the case of her arrest.

In the list, she asked that democratic countries, diplomats, and international organizations avoid private diplomacy, instead requesting that they support her by "standing for freedom of speech and freedom of privacy in this country as loudly as possible. Otherwise," she said, "I would prefer that you not act at all." She added that she did not want international appreciation given in exchange for her release, saying "My possible arrest will be just one of more than 100 politically motivated arrests, and the government of Azerbaijan has managed to use the revolving doors of prisons in order to get positive feedback from the West: releasing one prisoner, getting praised, arresting two."

To fellow international journalists, Ismayilova further requested that, “If/when I get arrested, I want you to make sure that your audience understands the reasons. [My] anti-corruption investigations are the reason for my arrest. The government is not comfortable with what I am doing. I am about to finish three investigations. I will make sure to finish them before anything happens; if not, my editors and colleagues will finish and publish them.”

In October, 2014 at a Organization for Security and Cooperation in Europe (OSCE) Human Dimension Implementation meeting in Warsaw, Ismayilova recorded an interview describing the corruption and human rights violations of the Azerbaijani government and stated that she would not be surprised if she was arrested soon.

On December 4, 2015 the Azerbaijani government released a 60-page manifesto written by the Presidential Chief of Staff, Ramiz Mehdiyev. Mehdiyev singled Ismayilova out as “the best example” of journalists working against the government, writing, “She puts on anti-Azerbaijani shows, makes absurd statements, openly demonstrates a destructive attitude towards well-known members of the Azerbaijani community, and spreads insulting lies ... There is no need to prove that the provision of false information is the same as working for the foreign secret service. This is treason.”

On the following day, December 5th, Ismayilova was summoned to the Baku City Prosecutor's office for interrogation. Upon arrival, she was detained and informed that the Prosecutor had issued an order for her arrest on the charge of driving a person [journalist Tural Mustafayev] to attempt suicide. That evening, the Sabail District Court in Baku sentenced Ismayilova to two months of pre-trial detention.

On December 6, 2014 Ismayilova was transferred to the Kurdakhany pre-trial detention center, approximately 30 kilometers outside Baku. On the same day, an illegal search was conducted in her home by about 15 law enforcement officials and other employees of the General Prosecutor's Office. 58 DVDs, a modem, and several business cards belonging to Ismayilova were confiscated from her home without any relevant notes being made.

On December 26, 2014 investigators from the General Prosecutor's office, accompanied by armed police officers, raided and searched the offices of Radio Azadliq, the Azerbaijani service of Radio Free Europe/Radio Liberty (RFE/RL) where Ismayilova worked. Staff members were summoned for questioning, and their computers and documents were confiscated. The investigation accused Radio Azadliq of financial violations, but many human rights activists and journalists claimed that the crackdown on the radio station was related to the case against Ismayilova.

On December 27, 2014 Mustafayev attempted to leave Azerbaijan for Moscow. However, the General Prosecutor's office had barred him from leaving the country and Mustafayev was detained by police in the city of Goychay. According to Mustafayev, he told the police that he would renounce his claims against Ismayilova and returned to his parents' house.

Mustafayev stated that he did not send the statement renouncing his earlier claims against Ismayilova because he was detained in front of his home by police and two employees of the Ministry of National Security. Mustafayev was taken to Baku and kept under house arrest in an apartment owned by the Ministry of National Security until February 14, 2015 with no telephone or Internet.

On February 14, 2015, Mustafayev said that he was beaten, put into a car with a bag over his head, and taken to the Department of Neurosis at a psychiatric hospital. There, he was given forced injections of psychotropic drugs. Mustafayev was told that charges could be brought against him under Article 296 (deliberate false accusation of a crime), and that he could be sentenced to three years in prison.

On January 27, 2015 the Sabail District Court in Baku ruled to extend Ismayilova's pre-trial detention for an additional month and nineteen days as the investigation continued.

On February 13, 2015 the Grave Crimes Investigation Unit of the General Prosecutor's Office brought further charges of embezzlement (Article 179.3.2), illegal enterprise (Article 192.2.2), tax evasion (Article 213.1) and abuse of power (Article 308.2) against Ismayilova. Ismayilova's lawyer, Fariz Namazly, stated that the authorities were trying to compensate for the flimsiness of the original charges brought against Ismayilova.

On February 23, 2015, a closed-door trial at the Binaghadhi District Court in Baku found Ismayilova guilty of criminal libel against former opposition member Elman Hasanov, and Ismayilova was fined 2,500 manat. Hasanov had filed a lawsuit claiming that Ismayilova had slandered him after she published a document that named him as an agent of the Ministry of National Security. Ismayilova rejected the allegations, pointing out that no names had been used in the document, rendering the accusation of libel impossible.

On March 6, 2015 the Nasimi District Court in Baku ruled to extend Ismayilova's pre-trial detention until May 24, 2015.

On April 8, 2015 Mustafayev told Radio Azadliq that he had written a letter renouncing his allegations against Ismayilova and sent it to head public prosecutor Zakir Garalov. Later, Mustafayev stated that he had been blackmailed into testifying against Ismayilova and wrote the testimony under the dictation of the first deputy prosecutor of Baku, Azer Asgarov.

On June 22, 2015 the Grave Crimes Investigation Unit of the General Prosecutor's Office announced that it had completed its preliminary investigation on the Ismayilova case.

Court Hearings in the Baku Court on Grave Crimes

Court hearings began in late July, 2015 and concluded in early September, 2015. The hearings took place on July 24th, August 7th, August 10th, August 13th, August 14th, August 18th, August 19th, August 20th, August 21st, August 26th, August 31st, and September 1st.

The hearings were held in the Baku Court on Grave Crimes (Address: Samed Vurgun Str. 30, Baku, Azerbaijan-1000). The presiding judge was Ramella Allahverdiyeva; the other members of the board were Tamella Nesrullayeva and Novruz Karimov; the public prosecutor was Ramazan Hadiyev. The defendant was represented by the lawyers Fariz Namazly and Fakhraddin Mehdiyev.

According to the prosecution, Ismayilova was guilty of driving someone to attempt suicide, embezzlement, illegal enterprise, tax evasion, and abuse of power. Ismayilova, her lawyers, and human rights activists did not accept the charges, considering them to be politically motivated. The Defense further linked the arrests to Ismayilova's human rights activities.

On September 1, 2015 the Baku Court on Grave Crimes sentenced Ismayilova to 7 1/2 years in prison on the charges of embezzlement, illegal enterprise, tax evasion, and abuse of power. The Court acquitted Ismayilova on the charge of driving someone to attempt suicide.

The Baku Court of Appeal

Appellate court hearings began in mid-October, 2015 and concluded in late November, 2015. The hearings took place on October 15th, October 29th, and November 25th.

The hearings were held in the Baku Court of Appeal (Address: Zahid Khalilov Str. 540, Baku, Azerbaijan-1073). The presiding judge was Ilgar Murguzov; the other members of the board were Gadim Babayev and Mirzali Abbasov; the public prosecutor was Abbas Abbasli. The defendant was represented by the lawyers Fariz Namazly, Fakhraddin Mehdiyev, and Javad Javadov.

On November 25, 2015 the Baku Court of Appeal upheld the verdict of the Court on Grave Crimes.

The Supreme Court of Azerbaijan

The Supreme Court hearing took place on May 25, 2016.

The hearing was held in the Supreme Court of Azerbaijan (Address: 14 Yusif Safarov Street, Quarter 1193, Baku, Azerbaijan). The presiding judge was Ali Seifaliev; the other members of the board were Hafiz Nasibov and Ilgar Jagirov; the public prosecutor was Mustajab Aliyev. The defendant was represented by the lawyers Fariz Namazly, Javad Javadov, and Fakhraddin Mehdiyev.

The Supreme Court ruled to reduce Ismayilova's sentence to a suspended sentence of three and a half years, and she was freed on probation under conditions that confined her to Baku and barred her from any professional activity for two years.

Support From Society

Along with other human rights activists, Ismayilova was jailed in 2014 as part of a country-wide crackdown. Ismayilova's arrest is widely considered to be politically motivated. Many NGOs expressed concerns that the prosecution against Ismayilova is related to her extensive reporting on government corruption, especially the business interests of the ruling Aliyev family.

Numerous international and intergovernmental organizations, including Human Rights Watch International, Amnesty International, and the European Union, publicly condemned Ismayilova's detention and demanded her immediate and unconditional release. Amnesty International has proclaimed Ismayilova a "prisoner of conscience." A number of international and local organizations, including observers and representatives from Human Rights House Tbilisi, the Azerbaijani Musavat Party, the Azerbaijani People's National Front Party, the European Council, the American Embassy, the German Embassy, the English Embassy, the French Embassy, and the Dutch Embassy were present throughout the trials, along with members of the media and civil society.

When permitted, the events of the trial were covered by mass media outlets including Meydan TV, Radio Azadlig, Radio Free Europe/Radio Liberty (RFE/RL), Voice of America, and the Turan Information Agency.

A delegation from The Observatory for the Protection of Human Rights Defenders (OBS) visited Baku in January 2015 to meet with civil society actors in order to witness first-hand the impact of the Azerbaijani government crackdown on independent voices. The delegation tried to visit jailed human rights defenders, including Khadija Ismayilova. Despite its repeated requests the mission was unable to gain access to the detention centers or arrange a meeting with any government representatives.

Following this mission, the monitor released a report on April 21st documenting the repression against human rights defenders in Azerbaijan, stating, "The mere fact that the mission was denied access to

Leyla Yunus in prison and the other detained human rights defenders speaks for itself and shows that on the eve of the European Games, which will take place in Baku in June 2015, there is a serious risk that the human rights defenders' situation will further deteriorate.”

Communication Outside Prison Walls

In a letter from prison on February 6, 2015 that was passed to the media through intermediaries, Ismayilova wrote, “I have not been allowed to see my family ... The arbitrariness of the penitentiary system allows me two phone calls each week that I use to speak with my mother but, contrary to the law, denies her and my lawyer regular visits.”

Relevant law - Criminal Procedural Code of Azerbaijan

Article 125. Driving Someone to Attempt Suicide

Bringing a person, who is taking part in material service or other dependence from the guilty party, to suicide or to attempt a suicide by threats, cruel treatment or regular humiliation of his dignity — shall be punished by restriction of freedom for a term of up to three years or imprisonment for a term of three to seven years.

Article 179. Assignment or Waste

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

179.2. The same acts committed: **179.2.1.** on preliminary arrangement by a group of persons; **179.2.2.** repeatedly; **179.2.3.** by a person with the use of a service position; **179.2.4.** with the causing of damage in significant size – is punishable by a penalty of two to three thousand of the nominal financial unit or imprisonment for a term of three 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 an organized group; **179.3.2.** in large size; **179.3.3.** by a person, who has already been convicted two or

more times for plunder or extortion – is punishable by imprisonment for a term of seven to twelve years — with confiscation of property or without it.

Article 192. Illegal Business

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 the extraction of income to a significant amount – is punishable by a penalty at a rate of one to five thousand of 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 up to three years or imprisonment for a term up to five years.

Article 213. Evasion from payment of taxes

213.1. Evasion of a physical person from the 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 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 by a penalty at a rate of one to two thousand of the nominal financial unit or with corrective works for a term of up to one year.

213.2. The same act: **213.2.1.** causing damage in large amount; **213.2.2.** committed with the extraction of a large amount of income; **213.2.3.** committed by an organized group — is punishable by the penalty at a rate of two to five thousand of the nominal financial unit, or corrective works for a term up to two years, or restriction of freedom for a term up to two years, or imprisonment for a term of about six months.

213.3. Evasion from the payment of taxes or other obligatory payments of a significant amount by inclusion in accounting documents of a organization, obviously deformed data on incomes or charges, or in a different way — is punishable by corrective works for a term up to two years, or with restriction of freedom on the same term, or imprisonment for a term up to one year with deprivation of the right to hold certain posts or engage in certain activities for a term up to three years or without it. **213.4.** The act, which is provided in article **213.3** of the present Code, committed in a large scale is punished by

restriction of freedom for a term up to three years or with imprisonment for a term up to three years with deprivation of the right to hold certain posts or to engage in certain activities for a term up to five years or without it.

NOTE:

1. The “significant amount” in articles **213.1** and **213.2** of the present Code is understood as the sum of two to five thousand, and the “large amount” is over five thousand of the nominal financial unit.
2. The “significant amount” in articles **213.3** and **213.4** of the present Code is understood as a sum over fifteen thousand, and the “large amount” is over twenty five thousand of the nominal financial unit.
3. The person who has committed acts for the first time, as it is provided by articles **213.1-213.4** of the present Code, shall be released from a criminal liability if he has completely compensated for the damage caused by a crime.

Article 308. Abuse of 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 by a penalty at a rate from one to two thousand of the nominal financial unit, or with deprivation of the right to hold certain posts 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 by imprisonment for a term from three to seven years with deprivation of the right to hold certain posts 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 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 for by appropriate articles.

II. Detailed Information Regarding Criminal Proceedings (Instance by Instance)

1. Detention, Pre-trial Period

The General Prosecutor's office detained Ismayilova in the absence of reasonable suspicion that she had committed any criminal offenses.

Ismayilova, the target of an orchestrated smear campaign in 2012, was detained and interrogated multiple times throughout 2014 amid growing accusations from pro-governmental sources that she was betraying the Azerbaijani government and leaking state secrets, leading to the conclusion that the charges brought against her in December 2014 were nothing more than a pretense. No court order was shown to her and no supporting documents were provided. She wasn't informed promptly about the grounds for her arrest. Furthermore, the meaning of the charges was not explained clearly to her in spite of her request to have it explained.

The Court failed to examine all the facts arguing for or against the necessity of Ismayilova's detention. The Court passed formally through all necessary stages of the trial proceedings and yet did not analyze material presented as evidence by the lawyers. The charges were based on the false testimonies of victims who were pressured by investigators, and the desire expressed by certain witnesses to retract allegations that they had made under pressure was ignored by the Court.

By the decision of the Court, Ismayilova's pre-trial detention period was to be two months. The Defense filed several motions to replace Ismayilova's pre-trial detention with house arrest or bail (as provided by Article 9.3 of the United Nations International Covenant for Civil and Political Rights), but the Court refused to satisfy the motions. The defense also filed a motion requesting that all charges against Ismayilova be dropped in the absence of evidence of guilt, but the Court also refused to satisfy this motion.

On January 27, 2015 the Sabail District Court in Baku ruled to extend Ismayilova's pre-trial detention for an additional month and nineteen days as the investigation continued.

On March 6, 2015 the Nasimi District Court in Baku ruled to extend Ismayilova's pre-trial detention until May 24, 2015.

Relevant Law - Criminal Procedural 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.

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. Baku Court on Grave Crimes

2.1. Courtroom and Location of the Parties

The hall was small and there was not enough space for everyone who had arrived. Despite motions to move to a larger room, the trials were often held in the smallest courtroom, even though some of the larger ones were empty at the time. A significant portion of the courtroom was occupied by a glass cell for the defendant. The glass cell obscured some space where the judicial panel and the court secretary were seated. Depending on where the observer sat, it was generally much easier to hear the voice of the Presiding Judge than to see her.

The public was placed too far away to observe the process fully, with both visual and audio impediments restricting observation. Throughout all of the court proceedings, Ismayilova was forced to sit inside the glass cell. Inside the cell, the microphones were often turned off, meaning Ismayilova couldn't hear what was going on and couldn't be heard herself. Within the glass cell, she was restricted from consulting with her lawyers as needed.

The Defense repeatedly submitted petitions so that Ismayilova could leave the glass cell and sit beside her lawyers, but the court rejected the petitions.

2.2. Publicity of the Hearings

Although the hearings were supposedly open to the public, court doors were repeatedly shut to international observers, interpreters, journalists and diplomats. People were often unable to enter due to a lack of seating or last-minute changes in starting times.

During the trial on August 7, 2015 numerous journalists and activists arrived to attend the hearing, but were not allowed in. Journalist Orkhan Rustemzade, who was filming in front of the courthouse, was taken to Police Station #22 without explanation. He was released after two hours.

After the hearing was over, Voice of America radio journalist Tapdig Farhadoglu was assaulted by two women and a man after asking questions of those leaving the courthouse. Meydan TV journalists Izolda

Agayeva and Aytaj Ahmadova, filming with Radio Liberty reporter Islam Shikhali, also faced violence. An elderly woman took a glass bottle from a bin and attempted to hit Ahmadova. Ahmadova's colleagues intercepted the blow, but another woman managed to hit Ahmadova with her bag. A man attempted to assault Shikhali, but Shikhali managed to escape.

Farhadoglu tried to seek refuge from the attacks in the court building, but the court guards and police forced him back out towards the waiting crowd. A young man came from a distance and hit Farhadoglu. Police officers present at the scene failed to intervene or protect members of the press from this outbreak of violence, instead telling Farhadoglu to refrain from "causing provocations."

A lack of microphones made it difficult to monitor the process. The motion to turn on the microphones was dismissed several times. The location of the glass cell, blocking part of the courtroom, also made it difficult to observe the judges and the parties.

Before the proceedings began, visitors were frisked by guards to ensure that no items that could be used for video-audio recording were brought into the courtroom. Every visitor was checked individually. Mobile phones, IDs, and bags had to be left outside the courtroom and were returned after the proceedings. Despite motions to move to a larger room, the trials were often held in the smallest courtroom, even though some of the larger ones were empty at the time.

Under the common rule of law working in Azerbaijani courts, audio-video recording is not routine within the courtroom; however, it may be permitted by the Court on the grounds of the motions of the parties. Repeated motions were filed by the Defense requesting that video-audio recording of the hearing be allowed in order to ensure fair and reliable documentation, but the motions were rejected by the court.

The only protocol minutes were provided by the Court Secretary. The glass cell made it impossible to see how the Court Secretary was working.

It is clear that despite the fact that the hearings were open to the public, publicity was not fully provided in compliance with international standards.

2.3. Court impartiality / Equality of arms

In most situations, the Court maintained visual impartiality while trying the case, but upon deeper inspection it was possible to note a lack of impartiality. In particular, it is notable that almost all of the defendant's motions were denied. In most cases, the judges gave no explanation as to why they had rejected the motions. **This provides grounds to conclude that they were not wholly independent in the decision-making process.**

At times, in the process of considering the arguments and motions, dismissive intonation and behavior was felt that made it clear that the Defense was not being taken seriously.

2.4. 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, nor was she promptly informed about the grounds for her arrest. Further, the meaning of the charges against her was not explained clearly.

She did not plead guilty as she considered all accusations to be absurd and illegitimate. The Defense agreed and filed a motion requesting that all charges against Ismayilova be dropped in the absence of evidence of guilt, but the Court refused to satisfy this motion.

- Lawyers of Her Own Choosing

The defendant was represented by lawyers of her own choosing. However, on March 12, 2015 Yalchin Imanov, a lawyer representing Ismayilova, was disqualified after two criminal cases against Ismayilova were merged. Imanov was cited as a witness in one of the two criminal cases, which disqualified him from acting as her legal representative in the other. Despite repeated motions from the Defense requesting that Imanov be reinstated as Ismayilova's lawyer, Imanov remained separate from the case.

-To Have Adequate Time / Opportunity for the Preparation of Her Position / Limited Access

Ismayilova and her lawyers were deprived of the opportunity to have adequate facilities for the preparation of her defense. It was impossible for the Defense to prove Ismayilova's innocence to the best of its ability due to the fact that so much information and documents had been confiscated.

During the court hearings, despite repeated demands and requests, Ismayilova was restricted from consulting with her lawyers as needed. After Ismayilova's lawyer, Fariz Namazly, submitted a petition so that Ismayilova could leave the glass cell and sit beside her lawyers, the prosecutor stated that Ismayilova was in the glass cell for her own safety, to which Ismayilova sarcastically thanked the prosecutor. The judge rejected the petition, upholding the prosecutor's statement.

By scheduling a hearing every day, the Court further deprived Ismayilova of the opportunity to consult with her lawyers, thus violating the right to effective defense. The judge repeatedly ignored requests and objections made in this regard. The judge also overruled objections regarding interference by court guards in confidential discussions between Ismayilova and her lawyers, failing to intervene in any way.

As clarified by various lawyers and NGO activists, the time given for meeting with a lawyer in prison was usually restricted or refused. Furthermore, prisoners can only meet with one lawyer (if they have two or more, they can not meet with all of them or even two of them). This raises the question of having inadequate time for legal consultations and the preparation of her position before the court hearings.

-Access to the Investigation Materials / Limited Access

Ismayilova and her counsel had problems with access to case materials during pre-trial and trial investigation. During the hearing on July 24, 2015, for example, Khadija stated that the failure of the investigative authorities to do their job meant that she did not have any time to familiarize herself with the case documents. Investigators had promised Ismayilova that they would provide Ismayilova with copies of any case documents she required, but inevitably they failed to do this.

2.5. Motions of the Defendant and Her Counsel

-Hearing of July 24, 2015

The Defense filed several motions, all of which were rejected:

- Ismayilova claimed that there were substantial delays in the postal deliverance of letters sent by the investigative body and the court to the pre-trial detention facility. According to Article 161.0.5 of the Criminal Procedural Code of Azerbaijan, the letters should have been delivered within one day. However, Ismayilova claimed that she received them after six days at best. After Ismayilova complained about the delay, the investigation recorded that Ismayilova had received the letter on July 13th, when in fact the letter hadn't even been sent until the 22nd. The Court rejected the concerns.
- Ismayilova asked that her lawyer, Yalchin Imanov, be returned to her case, stating that he had been disqualified from her case illegally. Imanov was disqualified after two criminal cases against Ismayilova were merged. Imanov was cited as a witness in one of the two criminal cases, which disqualified him from acting as her legal representative in the other. Ismayilova also stated that although Imanov was her lawyer in other cases, as well, she was not allowed to talk to him by phone. The prosecution, citing a conflict of interest, protested Ismayilova's motion. After adjourning to deliberate for 3-4 minutes, the Court rejected the petition.
- Ismayilova and the Defense requested that the hearing be moved to a larger courtroom, so that all those who wanted to attend would be able to. The court rejected the petition, stating that a more important case on terrorism was being held in the larger hall.
- Defense lawyer Fariz Namazly filed a petition requesting the cancellation of the criminal case due to lack of sufficient and reliable evidence, and to withdraw the testimonies of seven witnesses from the case on account of the fact that they were not eye witnesses and had never even witnessed Ismayilova and Mustafayev interacting. The public prosecutor opposed the motion, adding, "It's an open trial, let them come and speak, the people will know the truth." The court rejected the petition.
- Ismayilova stated that she had not been given any time to familiarize herself with the case documents. Investigators (Sana Pashaev and Orkhan Babaev) had promised Ismayilova that they would provide Ismayilova with copies of any case documents she required, but inevitably they failed to do this. After the prosecutor protested these claims, the court dismissed Ismayilova's petition. The petition to provide Ismayilova with copies of case documents remained unaddressed until the court could review which of them were available.
- The Defense petitioned to include the video recorded by Mustafayev on May 3, 2015 in the case file and investigation. Mustafayev supported the motion. The public prosecutor opposed the motion, saying that the source of the video was suspiciously unknown. The court rejected the petition and Ismayilova accused the judges of acting on a double standard regarding the evidence submitted by the Prosecution and the Defense.

- The Defense petitioned that official representatives of Radio Azadliq be allowed to engage in the trial since several of the charges against Ismayilova were related to her activity at the radio station. The Court left the question open, saying that it would be possible for representatives of the radio station to be invited as additional witnesses following the testimonies of the existing witnesses.
- The Defense filed a petition requesting that video-audio recording of the hearing be allowed in order to ensure fair and reliable documentation. The court rejected the petition.
- The Defense filed a petition to replace Ismayilova's pre-trial detention with house arrest or bail. The Prosecutor objected, stating that the grounds for arrest still existed, and that under house arrest Ismayilova could influence victims and witnesses. The court rejected the petition.
- The Defense submitted a petition so that Ismayilova could leave the glass cell and sit beside her lawyers. The prosecutor protested, saying that Ismayilova was in the glass cell for her own safety. The court rejected the petition.

-Hearing of August 7, 2015

- Ismayilova filed a motion to allow members of the public and journalists to enter the courtroom. The court rejected the petition.
- The Defense objected to the composition of the court on the grounds that Ismayilova's motion had been rejected, and because the court required that the witnesses be questioned before the alleged victim. The court rejected the petition.
- The Defense submitted a petition so that Ismayilova could leave the glass cell and sit beside her lawyers. The prosecutor protested, saying that Ismayilova was in the glass cell for her own safety. The court rejected the petition.
- Because Radio Azadliq had an account with the Azerbaijan International Bank (AIB), the Defense petitioned that an inquiry be sent to the AIB to establish whether they had held Ismayilova's sample signature as the head of Radio Azadliq and/or payment orders bearing her signature intended for the conduct of financial operations. The court rejected the petition.
- The Defense filed a petition requesting that the Court add the decisions on opening and suspending the tax inspection of Radio Azadliq to the case file. The court rejected the petition.

-Hearing of August 10, 2015

- The Defense filed a petition requesting that Mustafayev's media interviews be included in the evidence list. In those interviews, Mustafayev had stated that law enforcement agencies had

blackmailed several people with secretly recorded videos in order to compel them to give statements incriminating Ismayilova. The court rejected the petition.

- The Defense also requested that Mustafayev's victim status be dismissed. The court rejected the petition.

-Hearing of August 13, 2015

- The Defense requested that Shahla Humbatova be questioned as a witness in relation to Mustafayev's suicide attempt. The court rejected the petition.
- The Defense said that they had sent an inquiry to Meydan TV regarding the claims that Mustafayev had been fired from Meydan TV at Ismayilova's insistence. The Defense had received a response and petitioned that this response be included in the evidence list. The Court rejected the petition because they believed the source of the response to be suspicious.
- The Defense requested that Mustafayev's email correspondence with the head of Radio Azadliq, Babak Bakir, about Mustafayev's intention to quit his job at Radio Azadliq be included in the evidence list. The Court rejected the petition.
- The Defense filed a motion to summon Adil Ismayilov, a representative of Radio Azadliq, to the trial. The Court rejected the petition.
- During his testimony, Mustafayev stated that he had not voluntarily presented his personal Facebook correspondence to the prosecutor's office. Therefore, the Defense requested that this correspondence be removed from the evidence list. The Court rejected the petition.
- The Defense requested that relevant representatives of the Ministry of Communications and Information Technologies and the National Television and Radio Council be summoned to court as additional witnesses in connection with the issue of the radio station's broadcast. The court rejected the petition.
- Ismayilova and the Defense protested the rapid pace at which the trial was being held, and requested more time. The court rejected the petition.

-Hearing of August 14, 2015

- Ismayilova petitioned that Judge Ramella Allahverdiyeva be removed from the case for several reasons, claiming that: Allahverdiyeva had violated the principle of the equality of arms; Allahverdiyeva threatened the defendant at a court hearing, saying that a 15-year jail sentence

awaited her; Allahverdiyeva refused to add documents which refuted claims that had been made by witnesses to the case file; none of the Defense's motions had been granted; the motion filed on August 13, 2015, which requested the questioning of certain witnesses, was rejected; Allahverdiyeva refused to add Mustafayev's interview with Azadliq newspaper on August 4, 2015 or his video message published on YouTube on May 3, 2015 to the case file, even though the motion to add the YouTube message to the case file was also submitted by Mustafayev himself; the motion to revoke Mustafayev's victim status, which was backed by Mustafayev as well, was rejected groundlessly; by scheduling a hearing every day, Allahverdiyeva deprived the defendant of the opportunity to liaise with her lawyers, thus violating the right to effective defense; Allahverdiyeva overruled objections regarding interference by court guards in confidential discussions between the defendant and her lawyer, and failed to intervene in this regard.

- The Defense backed Ismayilova's petition. The public prosecutor denounced the petition as vague, unsupported, and inconsistent. The Court rejected the petition.

- Ismayilova declared an objection against the court clerk on the grounds that the court minutes had been falsified. Ismayilova requested that she be given an opportunity to familiarize herself with the minutes of the court hearings, noting that there could be other cases of falsification and she wanted to file motions for the timely correction of those falsifications. The court rejected the petition.

- The Defense requested that the representative of Radio Azadliq, Adil Ismayilov, be invited to the hearing. The Court rejected the petition.

- The Defense requested that the following documents be added to the case file and investigated: an April 23, 2015 letter from the National Television and Radio Council (NTRC); a December 30, 2008 excerpt from the minutes of the NTRC's meeting; a May 14, 2015 letter from the State Radio Frequency Department of Ministry of Communications and Information Technologies; a June 23, 2015 letter from the Radio and Television Broadcasting and Satellite Communications Production Association of the Ministry; and a December 30, 2008 letter from the NTRC. The Court rejected the petition.

- The Defense requested that the contracts signed between Esmira Javadova and RFE/RL and between Shahvalad Namazov and RFE/RL be added to the case file and investigated. The Court rejected the petition.
- The Defense filed a petition requesting that six witnesses mentioned in the indictment be questioned. The Court rejected the petition.
- The Defense requested time to prepare new motions and confer with Ismayilova. The Court set the next hearing for August 18, 2015.

-Hearing of August 18, 2015

- Ismayilova stated her objection to the composition of the bench, citing violations of the equality of arms. The Defense supported her petition. The public prosecutor denounced Ismayilova's objection as unfounded. The Court left the motion unconsidered.
- Ismayilova filed a petition requesting that the court present any contract or payment order bearing her signature. The Court rejected the petition.
- Ismayilova and the Defense filed a motion to question additional witnesses. The Court replied that there was no need to question additional witnesses and rejected the petition.

-Hearing of August 19, 2015

- Ismayilova noted that the expert opinion issued in December, which was to be presented to Mustafayev within 10 days as per the Criminal Procedure Code, was given to him only in February. She called this a gross violation of the law and added, "If you accept that instance of violation of the law as evidence, then please proceed."
- The Defense requested that the statements and contracts of six witnesses — Shamsaddin Hamidov, Gulnara Babayeva, Mustajab Mammadov, Malahat Nasibova, Gular Sadigova and Samir Hasanov — be announced. The judge said these persons had been not interrogated as witnesses and did not have witness statements. The judge also said that civil contracts had been signed with those individuals, which were announced at Ismayilova's request.

- Ismayilova requested the case document which stated that she had signed contracts with Radio Azadliq employees Ilgar Rasulov and Rafiq Mammadov, but the court said there were no such contracts in the case file.
- The Defense requested the questioning of four experts from the Ministry of Taxes who had compiled a relevant Interim Act. The court allowed two of the four experts, Baku Taxes Department employees Elchin Aliyev and Imran Nurmammadov to be summoned as witnesses.
- The lawyers filed a second motion for the conduct of a new forensic accounting examination. The Court rejected the petition.
- Ismayilova and the Defense requested the addition of a letter sent to Judge Ramella Allahverdiyeva and Prosecutor General Zakir Garalov by the leadership of Radio Liberty to the case file. Saying that the letter must be received via mail, registered in the clerical office, and presented to the judge with the court chairman's instructions, the Court rejected the petition.
- The Defense filed a motion saying that the on-site tax inspections conducted in the office of Radio Azadliq were suspended until August 14th, and on August 15th the inspection period was extended until September 30. The Defense wanted that decision to be included in the evidence list. The Court rejected the petition.

-Hearing of August 20, 2015

- The Prosecution wrapped up their case in a closed trial
- The Prosecution requested an additional day in order to present their sentencing request. The Court granted the petition.

-Hearing of August 21, 2015

- The Prosecution requested a nine-year sentence for Ismayilova, upon which Court was adjourned

-Hearing of August 26, 2015

- The Defense filed a motion for a new trial on the grounds that "the prosecutor requested a sentence for [Ismayilova] referring to documents that were not present among the case materials." The public prosecutor requested that the motion be denied. The Court adjourned the trial until August 31, 2015.

-Hearing of August 31, 2015

-Ismayilova delivered her closing speech but was cut off by the Judge before finishing

-Hearing of September 1, 2015

-The Baku Court on Grave Crimes sentenced Ismayilova to 7 1/2 years in prison on charges of embezzlement, illegal enterprise, tax evasion, and abuse of power. The Court acquitted Ismayilova on the charge of driving someone to attempt suicide.

2.6. Victims and Witnesses / Interrogation Procedure

A number of victims and witnesses were presented for the case. *Victims:* Tural Mustafayev *Witnesses:* Aynur Imranova, Babak Bakir, Hakim Ahmadov, Nazakat Mustafayeva, Bulut Mustafayev, Rovshana Rahimli, Samira Agayeva, Shafa Mustafayeva, Matanat Abdinova, Gulnaz Guliyeva, Shahvalad Chobanoglu, Chingiz Sultansoy, Fargana Rasulova, Zemfira Aliyeva, Farah Aliyeva, Javid Abdullayev, Ulker Guliyeva, Farid Abdullayev, Imran Nurmammadov, and Esmira Javadova

Ismayilova and her lawyers made it clear that they believed the witness process was forced and fake. Throughout the trial, several witnesses, including Tural Mustafayev, Aynur Imranova, Rovshana Rahimli, Farid Abdullayev, and Esmira Javadova stated that they had given testimonies under pressure, or that their statements had since been altered or distorted.

On April 8, 2015 Mustafayev told Radio Azadliq that he had written a letter renouncing his allegations against Ismayilova and sent it to head public prosecutor Zakir Garalov. The renunciation was not taken into consideration during the hearings. Later, Mustafayev stated that he had been blackmailed into testifying against Ismayilova and wrote the testimony under the dictation of the first deputy prosecutor of Baku, Azer Asgarov, and investigator Vagif Suleymanov.

Questioning of the Victims and Witnesses

- The Questioning of Tural Mustafayev Before the Court

Tural Mustafayev is a journalist who previously worked at Radio Azadliq and Meydan TV. In December 2014, he filed official allegations against Ismayilova, claiming that she had driven him to attempt suicide.

During the trial on August 7, 2015 Mustafayev, officially deemed a victim in the case, did not attend the trial. Consequently, the court issued an order requiring his presence.

During the trial on August 10, 2015 Mustafayev testified that his suicide attempt on October 20, 2014 was unrelated to Ismayilova. "I got to know Khadija Ismayilova in October 2013," Mustafayev said, "and our relationship was purely professional. Neither my employment at Radio Azadliq, nor my decision to leave, nor my cooperation with Meydan TV, bears any relation to Ismayilova. The documentation regarding my treatment as a psychiatric patient in Mashtaga [settlement] is in the case file. Due to my poor mental health I attempted suicide three times in 2014."

Due to the contradiction between the statement Mustafayev gave in court and his prior statement, the court read out the statement he had provided during the investigation.

When the court asked for an explanation of this contradiction, Mustafayev said he had slandered Ismayilova in the testimony he provided to the investigators. He said, "I had no dependence on Khadija in any way. She played no role in my dismissal from my job, or my drinking the rat poison. I do not consider myself a victim."

During the trial on August 21, 2015 public prosecutor Ramazan Hadiyev contested much of Mustafayev's testimony, saying, "While testifying in court, victim Tural Mustafayev tried to defend Khadija Ismayilova by all means, saying "I don't know" and "I wanted this" in response to my questions. He said that he had slandered her, but he forgot one thing. Notably, he appealed to law enforcement agencies several times stating incontrovertible things that no one else knew. His investigation statement was also confirmed by his ex-wife Shafa Mustafayeva. Tural Mustafayev's family members, as well as the results of the forensic examination, show that he is sane and physically and psychologically healthy. Khadija Ismayilova forced Tural Mustafayev to become financially dependent on her. Later, Tural Mustafayev repeatedly begged her for forgiveness in order to restore his previous [financial] situation, but Khadija Ismayilova did not forgive him, thus bringing him to the brink of suicide. The public threat entailed by the offence stipulated in Article 125 of the Criminal Code is that it drives a person to death, and is an inhuman deed."

Mustafayev's representative, Safar Huseynov, spoke after Hadiyev and said that he agreed with what the public prosecutor had said.

During the trial on August 26, 2015 the Defense raised several points regarding Mustafayev. Among the points made were that: the last meeting between Ismayilova and Mustafayev took place on March 9, 2014, and the two did not communicate after that; at Radio Azadliq, neither was subordinate to or dependent upon the other, financially or otherwise; there was no evidence in the criminal case materials regarding Ismayilova's alleged intimidation of Mustafayev; forensic medical examination showed that Mustafayev was diagnosed with "affective personality disorder and fits of depression"; in a video message posted by Mustafayev on Youtube on May 3, 2015, he stated that he was forced to provide a written statement declaring that he had been driven to suicide by Khadija Ismayilova by the first deputy prosecutor, Azer Asgarov, and investigator Vagif Suleymanov; while being questioned in

court, Mustafayev said that his suicide attempt had nothing to do with Khadija Ismayilova, and that it was related to his ex-fiancee Rovshana Rahimli, a statement that was confirmed by multiple other witnesses.

- *The Questioning of Aynur Imranova Before the Court*

Aynur Imranova is an investigative journalist. During the trial on August 7, 2014 Imranova told the court that she had known Ismayilova since 2012 and participated in several of her programs. Imranova had never worked for Radio Azadliq, although she applied once because she thought her articles were similar to Radio Azadliq's style. She said that she had not met with Ismayilova since May 2014 due to personal differences, although Ismayilova had voluntarily assisted her in translating a project on the capacity-building of investigative journalists.

Imranova said that she had known Mustafayev since 2013; they met when Ismayilova was returning from abroad. Imranova met Rovshana Rahimli, Mustafayev's ex-fiancee, on March 9, 2014 in a cafe. Imranova stated that Mustafayev had attempted suicide after quarreling with Rahimli several times. She said that Mustafayev was an alcoholic who was mentally ill, that he used to beat Rahimli, and that he once tried to hang himself but failed.

Imranova said that she had been questioned by five people at the investigative agency, even though she had no information about the relationship between Ismayilova and Mustafayev. She said that the investigators took her statement under pressure, offering her an apartment, money, and so on if she testified against Ismayilova.

After Imranova testified, public prosecutor Ramazan Hadiyev contested much of Imranova's testimony, saying "In contrast to her court testimony, in her investigation statement Aynur Imranova stated that she had applied to Khadija Ismayilova [for a job] because the latter was the head of Baku Bureau of Radio Liberty ... I call the court's attention to the fact that Aynur Imranova has a higher education and knows her rights. Thus is it possible to deceive her and compel her to write something? Absolutely not. Judging from this fact, it is possible to say that in her testimony Aynur Imranova deliberately sought to help Khadija Ismayilova to evade responsibility. As that part of her testimony does not reflect the objective reality, her investigation statement should be accepted as evidence instead of what she said in her court testimony."

- *The Questioning of Babak Bakir Before the Court*

Babak Bakir is the former head of Radio Azadliq. During the trials on August 7, 2015 and August 21, 2015 he told the court that he had worked with Radio Azadliq since 1997, and that in 2005 he became a full-time employee. From 2010 to 2014, he effectively worked as the acting head. After stepping down as the head he worked as a correspondent, and Zeynal Mammadli became the new head. He stated that Yahya Mirzayev was in charge of dealing with documentation, and that he and Ismayilova were not involved in it. The head of Radio Azadliq was also not involved in financial matters. He also noted that for those who worked at the radio based on an employment contract, the radio paid taxes at a 14 percent rate, while for those who worked under a service contract, the radio paid taxes at a four percent rate on an individual basis.

When asked about Mustafayev, Bakir said that he knew Mustafayev. Bakir said that Mustafayev wanted to work for Radio Azadliq, and Bakir employed him. Mustafayev was not a staffer. Bakir said that Mustafayev once wrote Bakir an e-mail saying that he was tired and wanted to leave his job and give up journalism for a while. Mustafayev later worked for Meydan TV, and after quitting his job there, he applied to work at Radio Azadliq again, but there were no vacancies. Bakir said that Ismayilova did not express any opinion on Mustafayev at the time.

- *The Questioning of Hakim Ahmadov Before the Court*

Hakim Ahmadov is a security guard on Baku Boulevard, where Mustafayev was living. He said that he did not know Khadija. During the trial on August 7, 2015 he stated: "Citizens reported an incident, and I called an ambulance. None of [Mustafayev's] relatives or friends were present, until one person came. [Mustafayev] was conscious and able to talk. Then the ambulance arrived and took him."

- *The Questioning of Nazakat Mustafayeva Before the Court*

Nazakat Mustafayeva is the mother of Tural Mustafayev. During the trial on August 10, 2015 she said that her son came to Baku in late 2013, but she was unaware of his job or the people with whom he was involved. (In her initial testimony to investigators, however, Nazakat confirmed her son's statement and requested that Ismayilova be held accountable for driving her son to attempt suicide.)

During the trial on August 26, 2015 Nazakat stated that she was unacquainted with Ismayilova, and that her son's suicide attempt was related to his relationship with his ex-fiancee, Rovshana Rahimli.

- *The Questioning of Bulut Mustafayev Before the Court*

Bulut Mustafayev is the father of Tural Mustafayev. During the trial on August 10, 2015 he stated, "I had already said to investigators that we did not suspect anyone. Then we went to Rovshana's house and she said that it might have been done by Khadija Ismayilova and I was convinced. I do not have a complaint against anyone. Rovshana Rahimli told me that Tural lost his job and could not find a new one because of Khadija."

However, when Ismayilova asked him, "Do you consider me guilty in your son's suicide?" he replied, "I do not blame anyone at all."

During the trial on August 26, 2015 Bulut stated that he was unacquainted with Ismayilova, and that his son's suicide attempt was related to his relationship with his ex-fiancee, Rovshana Rahimli.

- *The Questioning of Rovshana Rahimli Before the Court*

Rovshana Rahimli is Mustafayev's ex-fiancee. During the trial on August 10, 2015 she told the court that Mustafayev had attempted to take his own life three times, and that none of these incidents had been related to Ismayilova. She requested that the court consider her court testimony as valid, because her testimony to the investigators had been distorted.

She stated: "I met Tural on March 8, 2014 at a holiday party and we got engaged on May 28th. He suffered from mental health issues. While we were together, he attempted suicide three times. Tural repeatedly insulted and physically assaulted me when he was drunk, but then he would promise to behave and we would reconcile. On October 15th, we had a big argument, leading me to file a police complaint on October 16th. After drinking rat poison on the Boulevard on October 20th, Tural Mustafayev wrote a text message to my friend Samira Agayeva saying that he did not want to live without me. After the suicide attempt, he was first taken to Semashko [hospital] and kept there for one day before being transferred to the mental health unit. We consulted a doctor while we were together, and he was diagnosed as a psychopath, meaning that his condition is impossible to treat."

- *The Questioning of Samira Agayeva Before the Court*

Samira Agayeva is a friend of Rovshana Rahimli's. During the trial on August 10, 2015 she confirmed that Mustafayev had psychological problems, stating, "Before his suicide attempt, I met him in the city and he said that he had been drinking for a week and did not want to live. And an hour later, I received a text message that read, 'Tell Roshka that I did what she had told me...'"

- *The Questioning of Shafa Mustafayeva Before the Court*

Shafa Mustafayeva is the ex-wife of Tural Mustafayev. During the trial on August 10, 2015 she stated that they had divorced on May 8, 2014 with two children, and that Mustafayev had gotten engaged to Rahimli after the divorce. "I heard from his family that he was unemployed and had lost his mind," Shafa said. "I did not face any pressure from the investigators."

During the trial on August 26, 2015 Shafa stated that she was unacquainted with Ismayilova, and that Tural's suicide attempt was related to his relationship with his ex-fiancee, Rovshana Rahimli.

- *The Questioning of Matanat Abdinova Before the Court*

Matanat Abdinova worked as a cleaner for Radio Azadliq. During the trial on August 10, 2015 she stated that she was hired in 2008 and signed a service contract with Yahya Mirzayev — not Ismayilova, who only gave Abdinova instructions related to cleaning. Abdinova discussed all job-related issues with Mirzayev. She said that her salary was transferred to her bank account, and she paid all the required taxes.

- *The Questioning of Gulnaz Guliyeva Before the Court*

Gulnaz Guliyeva is a translator for Radio Azadliq. During the trial on August 10, 2015, she stated that she had been hired by Ismayilova, and that she was not a permanent employee. She worked with a Taxpayer Identification Number (TIN) and had a bank account, which was later closed.

- *The Questioning of Shahvalad Chobanoglu Before the Court*

Shahvalad Chobanoglu is the editor and founder of the magazine "Different Opinion." During the trial on August 10, 2015 he stated that he had first been questioned in December 2014, but the interrogation was not directly related to Ismayilova because the charges against her were only brought in February 2015. He stated that "Khadija herself is the victim of a crime ... Khadija Ismayilova was not involved in my work. I was the editor and founder of the 'Different Opinion' magazine, which was registered with the Ministry of Justice. All related funds were transferred to my bank account and I paid four percent as tax. I have been a taxpayer since 2006."

- *The Questioning of Chingiz Sultansoy Before the Court*

Chingiz Sultansoy is a former journalist at Radio Azadliq. During the trial on August 10, 2015 he said, "When I was summoned for interrogation, I requested a lawyer, but the authorities told me that the lawyer could come later. Nonetheless, I refused to provide a testimony. Then I was questioned for three hours. They asked numerous questions. I told them that I had signed my employment contract with the [RFE/RL] head office and showed them my contract. I said that I had been hired by Kenan Aliyev, and that my salary bore no relation to Khadija Ismayilova."

During the trial on August 21, 2015 Sultansoy testified again and public prosecutor Ramazan Hadiyev contested much of the testimony, saying, "Sultansoy stated that he had signed a service contract, and that his job involved editing texts, which required him to be present in the editorial office. Under these circumstances, a service contract was signed to help the radio avoid paying higher taxes. Sultansoy noted that during the search and seizure, 12 employment record books and a stamp and seal were taken from Radio Azadliq's office. If Baku Bureau was not an employer, as Khadija Ismayilova said, then why were these there? From the Interim Act and other documents it once again becomes clear that although there were 12-14 full-time employees, there were 30 computers in the editorial office. Service contracts were signed with employees. During the last year under Khadija Ismayilova's leadership, Radio Azadliq operated without a license."

- *The Questioning of Fargana Rasulova Before the Court*

Fargana Rasulova is Mustafayev's former mother-in-law. During the trial on August 11, 2015 Rasulova stated that when Mustafayev lived in Goychay, he had good family relations and he did not have a mental illness. She added that Mustafayev's attempts to commit a suicide were not witnessed. After he moved to Baku, Rasulova said that Mustafayev had bad family relations and left the family after a while. Rasulova said that her daughter said that Mustafayev then had relations with another woman, so he lost interest in the family.

The judge then read out the testimony Rasulova had given during the preliminary investigation. In the testimony, Rasulova stated that when Mustafayev worked at Azadlig radio, a woman called H. Ismayilova, who worked at the same radio station and had vast resources, helped Tural. She went on to add that after Mustafayev became engaged to a girl named Rovshana, Ismayilova began to exert pressure on him.

After the judge read the testimony out loud, Rasulova said that she partly confirmed her testimony.

- *The Questioning of Farah Aliyeva Before the Court*

Farah Aliyeva is an employee of Radio Azadliq. During the trial on August 11, 2015 she said that at Radio Azadliq she worked on joint projects with the organization *Internews*, with which she signed a contract and received the fee.

- *The Questioning of Javid Abdullayev Before the Court*

Javid Abdullayev is a former roommate and co-worker of Mustafayev's. During the trial on August 11, 2015 he said that he lived in a rented apartment with Mustafayev and they worked together at Meydan TV. According to Abdullayev, Mustafayev told him that he had tried to commit suicide because of the deterioration of his relations with his fiancée, Rovshana Rahimli.

During the trial on August 26, 2015 Abdullayev did not confirm his investigation statement, saying that it had been given under duress. He told the court that he had no knowledge of any link between Mustafayev's suicide attempt and Ismayilova.

- *The Questioning of Ulker Guliyeva Before the Court*

Ulker Guliyeva is an employee of Radio Azadliq. During the trial on August 13, 2015 she was asked about the radio station's activities and the difference between full-time employees and contract workers. Guliyeva said that she had been working for the radio station since 2005 and received her salary in her International Bank account and then via a plastic card. She told the court that there was no significant difference between full-time employees and contract workers.

- *The Questioning of Farid Abdullayev Before the Court*

Farid Abdullayev is Radio Azadliq's technical maintenance worker. He was due to testify during the trial on August 13, 2015 but as he was not present, his investigation statement was read instead. In his statement, Abdullayev had noted that he worked based on a service contract and paid all required taxes. He added that he had once seen another Radio Azadliq employee, Javanshir Agamaliyev, receive a few thousand AZN in addition to his salary and withdraw the money from his account.

Ismayilova immediately objected to this statement, stating that Abdullayev's statement had been changed and that he must come to court. The court said this issue would be assessed at the end.

- *The Questioning of Imran Nurmammadov Before the Court*

During the trial on August 19, 2015 the Defense requested the questioning of four experts from the Ministry of Taxes who had compiled a relevant Interim Act. The court allowed two of the four experts, Baku Taxes Department employees Elchin Aliyev and Imran Nurmammadov to be summoned as witnesses.

This was followed by a 40-minute break in the hearing. After the break Nurmammadov, the State Tax Inspector of the Baku Taxes Department, was questioned as a witness, but he could not finish his testimony as the working hours of the court ended.

- *The Questioning of Esmira Javadova Before the Court*

Esmira Javadova is an employee of Radio Azadliq. During the trial on August 11, 2015 she stated that her words during the preliminary investigation had been distorted. She had not said that she signed a contract on employment with Ismayilova. She signed a contract with the personnel department and the document was signed by Kenan Aliyev.

During the trial on August 21, 2015 public prosecutor Ramazan Hadiyev contested much of the testimony, saying, “Esmira Javadova, who testified as a witness during the trial, said that in 2009 she met with Khadija Ismayilova, presented her articles, and signed a service contract with her. Her monthly income was 500-600 manat initially, later rising to about 1400 manat. She paid simplified tax, and paid four percent of her income in taxes. She enjoyed all relevant employment conditions at Radio Free Europe/Radio Liberty. My purpose in outlining this is to point out that if Esmira Javadova had signed an employment contract she would pay taxes at the 14 percent rate. In her investigation statement, Esmira Javadova noted that Khadija Ismayilova had recommended that she sign a service contract. This proves that Khadija Ismayilova deliberately created conditions for tax evasion. Javadova said in her testimony that she was forcibly summoned to give a statement at 7 p.m. on a non-working day and gave her statement under duress. However, the interrogation document shows that Esmira Javadova was interrogated not on a Saturday or Sunday, but on October 20th, which was a working day. She changed her testimony after seeing Khadija Ismayilova in the trial. She did not make any complaint to the prosecution authorities with regard to the circumstances of duress. Therefore, I believe that her investigation statement should be accepted as evidence.”

2.7. The Position of Ismayilova and the Defense

- *Closing Speech of Ismayilova*

During the trial on August 31, 2015 Ismayilova delivered a powerful and scathing closing speech. In it, she called the Azerbaijani judicial system a disgrace, filled with liars who resorted to falsifications and legal violations. However, she said the inept employees of the prosecutor's office and the tax authorities had even failed to perform a proper smear campaign against her. She said they had forced people to sign statements by breaking their will or taking advantage of their illiteracy, psychological state, and fear — and even then did not provide sufficient grounds for the criminal case opened against her. Ismayilova claimed that the charges brought against her had not been selected randomly; they were chosen because she had spoken and written so much about the crimes described in those Articles. She said that it did not matter to her if she was sentenced to jail, because it would just be one politically-motivated arrest among hundreds. At least in prison, she said, she could expose first-hand that the official claims of unprecedented development and transparency in the penitentiary service were myths. She said that she and her colleagues would not stop the critical work they were doing, concluding with, “Time will not stop when I am in jail.”

- *Closing Statements of the Defense*

During the trial on August 26, 2015 Ismayilova’s lawyers presented their final statements.

The Defense raised several points regarding Mustafayev. Among the points made were that: the last meeting between Ismayilova and Mustafayev took place on March 9, 2014, and the two did not communicate after that; at Radio Azadliq, neither was subordinate to or dependent upon the other, financially or otherwise; there was no evidence in the criminal case materials regarding Ismayilova’s alleged intimidation of Mustafayev; forensic medical examination showed that Mustafayev was diagnosed with “affective personality disorder and fits of depression”; in a video message posted by Mustafayev on Youtube on May 3, 2015, he stated that he was forced to provide a written statement declaring that he had been driven to suicide by Khadija Ismayilova by the first deputy prosecutor, Azer Asgarov, and investigator Vagif Suleymanov; while being questioned in court, Mustafayev said that his suicide attempt had nothing to do with Khadija Ismayilova, and that it was related to his ex-fiancée Rovshana Rahimli, a statement that was confirmed by multiple other witnesses.

Furthermore, several witnesses, including Tural Mustafayev, Aynur Imranova, Rovshana Rahimli, Farid Abdullayev, and Esmira Javadova stated that they had given testimonies under pressure, or that their statements had since been altered or distorted.

Regarding the charges that Ismayilova arranged that several employees of Radio Azadliq would sign service contracts to be registered as payers of simplified tax instead of income tax (misappropriating the 10% difference between the simplified tax and the income tax), the Defense argued that it had not been Ismayilova's responsibility to sign contracts with the people listed in the indictment, and that there was no evidence in the case file proving that she had. Furthermore, even if she had, there was no legal provision prohibiting this practice. Ismayilova was never responsible for administrative or economic functions at Radio Azadliq, calling the charges of illegal enterprise and abuse of official power into question, and Radio Free Europe/Radio Liberty was a non-commercial company that had never engaged in entrepreneurial activities. The accusations related to tax evasion and the radio's functioning without a license were simply false.

Ismayilova was not a foreign journalist in 2010-2014, but simply a local freelance journalist cooperating with local and foreign media. Thus, it would be inaccurate to treat her as a foreign journalist and to claim that she needed to be accredited with the Ministry of Foreign Affairs. Furthermore, the legislation did not stipulate administrative or civil liability – let alone criminal responsibility – for the failure to gain accreditation.

Ultimately, the Defense found every charge brought against Ismayilova to be trumped-up, illegal, and unfounded and demanded that she be acquitted on all charges.

2.8. The Position of the Prosecutor

The public prosecutor, Ramazan Hadiyev, maintained that Ismayilova had abused her powers as the head of Radio Azadliq, evaded payment of the taxes specified in Article 101 of Tax Code, and by signing service contracts with employees, enabled them to underpay their taxes. He believed that Ismayilova's guilt had been fully proven, and that Ismayilova needed to be convicted in order to rectify the situation and ensure her rehabilitation. He requested that she be sentenced to nine years in jail, along with a 3-year ban on holding any position in a state or municipal body.

2.9 The Verdict

On September 1, 2015 the Baku Court on Grave Crimes sentenced Ismayilova to 7 1/2 years in prison on charges of embezzlement, illegal enterprise, tax evasion, and abuse of power. The Court acquitted Ismayilova on the charge of driving someone to attempt suicide.

2.10. Conclusion Regarding Trial Procedures in the Baku Court on Grave Crimes

Studying the materials of monitoring process, it possible to conclude the following:

- The Court passed **formally through all necessary 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 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 Ismayilova. Ismayilova 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 Ismayilova's guilt. The Court did not analyze materials presented as evidence by the lawyers or the evidence from the proceedings.
- The charges were based on the false testimonies of victims who were pressured by investigators, and the desire expressed by certain witnesses to retract allegations that they had made under pressure was ignored by the Court.
- The Court was not independent in the decision making process and a lack of impartiality and equality of arms was evident.
- The publicity of the hearings was not provided in full.
- The defendant had problems in obtaining case materials and counsel from her lawyers as needed.
- She was not promptly informed of the grounds of her arrest. Further, the meaning of the charges wasn't explained clearly.
- Communication with those outside the prisons was restricted.
- The necessity of the lengthy prison detention of Ismayilova as a simple restrictive measure remains a pressing question. Formally, the legislative system of Azerbaijan allows for the possibility of detention for a person with grave charges pressed against her. In the case of Ismayilova, due to the weak justifications of the charges against her, as well as other grounds like the reputation of the Accused, it seems obvious that alternative measures should have been used against her.

2.11 Relevant Law - Criminal Procedural Code of Azerbaijan

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 her 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 her 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 her 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, defense counsel, the victim, the civil party, the Defendant to the civil claim or her representatives wish to file applications concerning the conduct of additional investigative procedures or the taking of new procedural decisions. At her request, parties to the criminal proceedings may be allowed 48 hours to prepare and file a written application.

3. Baku Court of Appeal

3.1. General Information About the Hearings

Appellate court hearings began in mid-October, 2015 and concluded in late November, 2015. The hearings took place on October 15th, October 29th, and November 25th.

The hearings were held in the Baku Court of Appeal (Address: Zahid Khalilov Str. 540, Baku, Azerbaijan-1073). The presiding judge was Ilgar Murguzov; the other members of the board were Gadim Babayev and Mirzali Abbasov; the public prosecutor was Abbas Abbasli. The defendant was represented by the lawyers Fariz Namazly, Fakhraddin Mehdiyev, and Javad Javadov.

On November 25, 2015 the Baku Court of Appeal upheld the verdict of the Court on Grave Crimes.

3.2. The Courtroom and Location of the Parties

The hall was small and there was not enough space for everyone who had arrived. A significant portion of the courtroom was occupied by a glass cell for the defendant. The glass cell obscured some space where the judicial panel and the court secretary were seated. Depending on where the observer sat, it was generally much easier to hear the voice of the Presiding Judge than to see him.

The public was placed too far away to observe the process fully, with both visual and audio impediments restricting observation. The unwillingness of the judges to use the microphones often made it difficult to understand the speeches.

The Defense submitted repeated petitions so that Ismayilova could leave the glass cell and sit beside her lawyers, but the petitions were rejected.

3.3. Publicity of the Hearings

Although the hearings were open to the public, people were often unable to enter the courtroom due to a lack of seating, or they were simply not allowed inside without a reason being provided. During the trial on October 29, 2015 the courtroom was changed last-minute after everyone had already seated themselves in the first courtroom. Upon arrival at the second courtroom, they discovered that there were hardly any seats left. During the trial on November 25, 2015 the Court began to let people into the courtroom later than usual, but shut the court doors before everyone had a chance to enter so as to begin the trial on time.

A lack of microphones made it difficult to monitor the process. The motion to turn on the microphones was dismissed several times, and the judges repeatedly shut off Ismayilova's microphone while she was attempting to speak. The location of the glass cell, blocking part of the courtroom, also made it difficult to observe the judges and the parties. During certain trials, the glass cell was surrounded by a line of 25 bailiffs and guards, so as to prohibit Ismayilova from seeing or hearing what was happening during the trial.

Before the proceedings began, visitors were frisked by guards to ensure that no items that could be used for video-audio recording were brought into the courtroom. Every visitor was checked individually. Mobile phones, IDs, and bags had to be left outside the courtroom and were returned after the proceedings. Despite motions to move to a larger room, the trials were often held in the smallest courtroom, even though some of the larger ones were empty at the time.

Under the common rule of law working in Azerbaijani courts, audio-video recording is not routine within the courtroom; however, it may be permitted by the Court on the grounds of the motions of the parties. Repeated motions were filed by the Defense requesting that video-audio recording of the hearing be allowed in order to ensure fair and reliable documentation, but the motions were rejected by the court.

The only protocol minutes were provided by the Court Secretary. The glass cell made it impossible to see how the Court Secretary was working.

It is clear that despite the fact that the hearings were open to the public, publicity was not fully provided in compliance with international standards.

3.5. Court impartiality / Equality of the Parties

In most situations, the Court maintained visual impartiality while trying the case, but upon deeper inspection it was possible to note a lack of impartiality. In particular, it is notable that almost all of the defendant's motions were denied. In most cases, judges gave no explanation as to why they had rejected the motions. **This provides grounds to conclude that they were most likely not independent in the decision-making process.**

At times, in the process of considering the arguments and motions, dismissive intonation and behavior was felt that made it clear that the Defense was not being taken seriously. Ismayilova was interrupted and reprimanded by the Judge on multiple occasions, whereas the Prosecution was never interrupted.

3.6. Right to an Effective Defense

- Lawyers of Her Own Choosing

The defendant was represented by lawyers of her own choosing.

-To Have Adequate Time / Opportunity for the Preparation of Her Position / Limited Access

Ismayilova and her lawyers were deprived of the opportunity to have adequate facilities for the preparation of her defense. It was impossible for the Defense to prove Ismayilova's innocence to the best of its ability due to the fact that so much information and documents had been confiscated.

During the court hearings, despite repeated demands and requests, Ismayilova was restricted from consulting with her lawyers as needed, and wasn't allowed to leave the glass cell in order to sit next to her lawyers. The judge also overruled objections regarding interference by court guards in confidential discussions between Ismayilova and her lawyers, failing to intervene in any way.

As clarified by various lawyers and NGO activists, the time given for meeting with a lawyer in prison was usually restricted or refused. Furthermore, prisoners can only meet with one lawyer (if they have two or more, they can not meet with all of them or even two of them). This raises the question of having inadequate time for legal consultations and the preparation of her position before the court hearings.

-Access to the Investigation Materials / Limited Access

Ismayilova and her counsel had problems with access to case materials during pre-trial and trial investigation. During the preliminary trial on October 15, 2015, for example, Ismayilova said that she had legally requested 3,600 pages of case materials and received only 700 of them without explanation.

3.7. The Motions of the Defendant and Her Counsel

-Hearing of October 15, 2015

The Defense filed several motions, all of which were rejected:

- The Court asked Ismayilova whether she had any objections to the court committee, to which she responded that it didn't make any difference to her because there wasn't one fair judge within the Azerbaijani judicial system.
- Ismayilova asked that her lawyer, Yalchin Imanov, be returned to her case, stating that he had been disqualified from her case illegally. Imanov was disqualified after two criminal cases against Ismayilova were merged. Imanov was cited as a witness in one of the two criminal cases, which disqualified him from acting as her legal representative in the other. Ismayilova also stated that although Imanov was her lawyer in other cases, as well, she was not allowed to talk to him by phone. The Court rejected the petition.
- The Defense submitted a petition so that Ismayilova could leave the glass cell and sit beside her lawyers. The Defense also requested that, if Ismayilova could not leave the glass cell, her lawyers be permitted to enter the glass cell or the courtroom be emptied, so as to ensure confidentiality of communication. The Court rejected the petitions.
- The Defense petitioned that the Court consider each motion one by one, instead of making sweeping verdicts. After a significant amount of protest, the Court accepted the motion, although failing to adhere to it throughout the remainder of the trial.

- Ismayilova requested a private consultation with her lawyers. The Court allowed a 10-minute consultation and cleared the courtroom. The guards, however, remained in the room and refused to allow Ismayilova to speak to her lawyers privately within the glass cell. Subsequently, Ismayilova broke off the consultation and the courtroom was opened again.
- The Defense filed a motion to replace Ismayilova's pre-trial detention with house arrest or bail. The Court rejected the petition.
- After the judges began to intermittently turn Ismayilova's microphone on and off as she was speaking, the Defense demanded that the judges stop playing with the microphones. Refusing, the Court simply shut the microphones off.
- The Defense requested that the motions filed by the Defense in the Court on Grave Crimes be reconsidered by the Appellate Court, since every motion they filed had been rejected. The Court rejected the petition.

-Hearing of October 29, 2015

- The Judge declared that the hearing would be postponed because of the legislative norm under Articles 392-297 of the Criminal Procedural Code of Azerbaijan which allowed Ismayilova one month to file a lawsuit to the Cassation Court. The judge stated that this term should be completely expired before the Appellate Court began the trial process. Ismayilova stated that she was not going to file a cassation suit and did not need the time, but the judge postponed the process anyway.
- Ismayilova requested that she be allowed to study the evidence more carefully, but the Court rejected the petition.

-Hearing of November 25, 2015

-The Baku Court of Appeal upheld the verdict of the Court on Grave Crimes.

3.8. The Position of Ismayilova and the Defense

-Ismayilova

Ismayilova made it clear throughout the entire trial process that she believed the investigation and trial to be illegitimate and a symptom of a larger system of corruption and repression in Azerbaijan. She stated that she expected the rejection of her appeal.

-The Defense

The Defense categorically maintained its earlier position that the court hearings were mere formalities, and that the charges against Ismayilova were illegitimate and lacked evidence. The Defense requested acquittal on all charges, although they, too, expected the rejection of her appeal.

3.9. The Position of the Prosecutor

The public prosecutor, Abbas Abbasli, rejected the appeal. Abbasli maintained that the charges brought against Ismayilova had been proven by witness testimony, forensic expertise, and various other evidence gathered throughout the criminal investigation. He requested that that the conviction made by the Baku Court on Grave Crimes remain in effect.

3.10. The Verdict

On November 25, 2015 the Baku Court of Appeal upheld the verdict of the Court on Grave Crimes.

3.11. Conclusion Regarding Trial Proceedings in the Baku Court of Appeal

Studying the materials of monitoring process, it possible to conclude the following:

- The Court passed **formally through all necessary 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 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 Ismayilova. Ismayilova 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 Ismayilova's guilt. The Court did not analyze materials presented as evidence by the lawyers or the evidence from the proceedings.

- The charges were based on the false testimonies of victims who were pressured by investigators, and the desire expressed by certain witnesses to retract allegations that they had made under pressure was ignored by the Court.
- The Court was not independent in the decision making process and a lack of impartiality and equality of arms was evident.
- The publicity of the hearings was not provided in full.
- The accused was not in **the position to hear everything clearly and participate normally** due to the fact that she was subject to the limitations of being in the glass cell.
- The defendant had problems in obtaining counsel from her lawyers as needed.
- Communication with those outside the prisons was restricted.

4. Supreme Court of Azerbaijan

4.1. Information About the Hearing

The Supreme Court hearing took place on May 25, 2016.

The hearing was held in the Supreme Court of Azerbaijan (Address: 14 Yusif Safarov Street, Quarter 1193, Baku, Azerbaijan). The presiding judge was Ali Seifaliev; the other members of the board were Hafiz Nasibov and Ilgar Jagirov; the public prosecutor was Mustajab Aliyev. The defendant was represented by the lawyers Fariz Namazly, Javad Javadov, and Fakhraddin Mehdiyev.

Court began at 2:30 p.m. and was attended by one representative from the U.S. Embassy, one representative and one interpreter from the German Embassy, one representative and one interpreter from the British Embassy, Azerbaijani human rights advocate Intigam Aliyev, and Ismayilova's mother. Ismayilova was not present at the trial.

Once the trial had begun, defense lawyer Fariz Namazly immediately petitioned for Ismayilova to be present during the trial. Defense lawyer Javad Javadov added that he had met with Ismayilova several days prior and she had asked to be present at her Supreme Court hearing.

The public prosecutor, Mustajab Aliyev, asked for the motion to be dismissed because the credibility of evidence would be discussed during the trial. Aliyev cited the decision of the European Court of Human Rights in the 1989 case of Nemtsov vs. Russia, where only the legal side of the case needed to be discussed and there was no necessity for the defendant to be present during the trial.

The Court rejected the Defense's petition.

Namazly filed a petition to add certain files regarding Radio Free Europe/Radio Liberty to the case. Aliyev objected, stating that the information had not been presented at the Court on Grave Crimes, thus it should not be taken into consideration now. The Court rejected the petition.

Namazly stated that intermediary verification acts had been completed during the investigation in order to bring additional charges against Ismayilova. Namazly stated that these acts were not permitted by law. Accordingly, all accusations based on those acts were unlawful and groundless. He added that Ismayilova's employment contract did not include any clause assigning her financial or administrative authority or designating her as an "official," which rendered the charges under 179.3.2 (embezzlement) and 308.2 (abuse of power) void.

Similarly, the charge under Article 213.1 (tax evasion) was not applicable to Ismayilova because the head of Radio Azadliq did not have administrative and financial powers, nor bear the responsibility for paying taxes and social security contributions. The charge under Article 192.2.2 (illegal enterprise) was not applicable to Radio Liberty as a U.S.-funded, non-profit that had not engaged in any business activity since its establishment.

As for the charges concerning the failure to gain accreditation from the Ministry of Foreign Affairs of Azerbaijan, Namazly stated that Ismayilova cooperated with Radio Free Europe/Radio Liberty on the basis of a service contract and was not an employee of that radio station or any foreign or local media. She operated as an independent journalist, selling her investigative stories to a number of media outlets, including Radio Free Europe/Radio Liberty.

Namazly concluded by requesting that the criminal case be dropped due to lack of sufficient and reliable evidence proving the charges. He also requested that Ismayilova be released immediately.

Javadov spoke next, stating that Ismayilova was not authorized to sign any contracts regarding the employment or dismissal of the journalists cooperating with Radio Free Europe/Radio Liberty. It had been confirmed that none of the contracts mentioned in the indictment were signed by Ismayilova. This rendered the charge under Article 179.3.2 (embezzlement) void.

Javadov concluded by requesting acquittal on all charges.

Defense lawyer Fakhraddin Mehdiyev spoke next. He demanded that all charges against Ismayilova be dismissed as illegal and unfounded. He stated that the investigating authorities had committed serious violations, and that there were no legal grounds for any of the accusations brought against Ismayilova. Like Namazly, Mehdiyev pointed out that Ismayilova was simply the coordinator at Radio Azadliq, where her job was limited to creative content and did not include financial or administrative responsibilities.

Mehdiyev concluded by requesting acquittal on all charges.

Finally, Aliyev spoke, saying that all of these arguments had been already presented in the Appellate Court and the Appellate Court had left the decision of the Court of First Instance unchanged. Therefore, Aliyev did not see any reason for the decision to be changed now.

After 15-20 minutes of deliberation, the Court announced its decision to reduce Ismayilova's sentence to a suspended sentence of three and a half years, freeing her on probation under conditions that confined her to Baku and barred her from any professional activity for two years.

Court concluded at 3:45 p.m.

4.2. Conclusion Regarding Trial Proceedings in the Supreme Court of Azerbaijan

Studying the materials of monitoring process, it is possible to conclude the following:

- The trial occurred as a formality. Many decisions regarding Ismayilova were made in advance. Thus, the Court **was not wholly independent in the decision-making process**
- Even though a general facade of impartiality was maintained, there was a fundamental **lack of impartiality** and **the equality of arms was violated**.
- The hearing was **not fully publicized in compliance with international standards**.
- The trial was based on unfounded charges and there was no legitimate evidence of Ismayilova's guilt; in short, everything ran contrary to the standards of Article 6 of the European Convention.

4.3. Relevant Law - Criminal Procedural Code of Azerbaijan

Article 10. Legislation

10.1. Courts and participants in criminal proceedings shall conform to the Constitution of the Azerbaijan Republic, this Code, other laws of the Azerbaijan Republic, as well as provisions of the international agreements to which Azerbaijan is a signatory.

10.2. No one may be incriminated or charged with a view to prosecution as a suspect or accused person, detained, arrested, searched, taken by force or subjected to other coercive procedural measures, nor convicted, punished or subjected to other limitations of rights and liberties other than on the basis of the rules and principles established by the laws of the Azerbaijan Republic which are in force and published.

10.3. The interpretation of the Constitution of the Azerbaijan Republic and other laws shall be binding on participants in criminal proceedings if that interpretation is made by decision of the Constitutional Court of the Azerbaijan Republic.

10.4. Observations on court practice by the Plenum of the Supreme Court of the Azerbaijan Republic shall constitute recommendations to the judicial authorities.

10.5. Procedures and decisions shall not be valid in the event of a breach of the rules laid down in this article.

Article 53. Grounds for Suspending the Conduct of the Criminal Prosecution

53.1. The criminal prosecution may be suspended in the following circumstances: 53.1.1. if the person to be charged is unknown; 53.1.2. if the whereabouts of the person to be charged are unknown; 53.1.3. if the person to be charged is not available to the investigating authority or the Court; 53.1.4. if the accused is unable to attend the proceedings because of serious illness or not being within the borders of the Azerbaijan Republic; 53.1.5. if the question of depriving the person charged with an offence of his right to immunity or the question of his extradition by a foreign country is raised in accordance with the law; 53.1.6. if the court submits to the Plenum of the Supreme Court of the Azerbaijan Republic a request for the constitutionality of the legislation applied or to be applied in respect of the prosecution to be examined by the Constitutional Court of the Azerbaijan Republic.

53.2. If the criminal prosecution is suspended, the conduct of the criminal case, the simplified pre-trial proceedings or the private prosecution shall also be suspended

Article 73. Jurisdiction of the Supreme Court of the Azerbaijan Republic

73.1. The Supreme Court of the Azerbaijan Republic shall function as the highest Appellate Court in criminal cases and other prosecution matters. 23 73.2. The criminal and administrative division of the Azerbaijan Republic 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 Azerbaijan Republic shall hear cases, on additional appeal, on the basis of submissions by the President of the Supreme Court of the Azerbaijan Republic, appeals by the Principal Public Prosecutor of the Azerbaijan Republic and complaints of the defense against decisions of the Supreme Court, and on the basis of newly established facts.

Article 78. The Court

78.1. Criminal cases shall be heard in the courts of the Azerbaijan Republic by a single judge or a bench of several judges.

78.2. Criminal cases and other prosecution matters which do not pose a major public threat or which concern minor offences shall be heard by a single judge in the Court of First Instance.

78.3. Criminal cases before the criminal division of the Supreme Court of the Nakhchivan Autonomous Republic, the Assize Court of the Azerbaijan Republic and the Military Assize Court of the Azerbaijan Republic shall be heard with the participation of a jury or a bench of three judges.

78.4. Appeals and complaints concerning criminal cases and other prosecution matters shall be heard in the Appellate Court by a bench of three judges.

78.5. In the criminal and administrative division of the Supreme Court of the Azerbaijan Republic, appeals and complaints concerning criminal cases and other prosecution matters shall be heard by a bench of three judges; on additional appeal or on newly ascertained facts, these cases and matters shall be heard by the Plenum of the Supreme Court of the Azerbaijan Republic.

78.6. It shall be prohibited to summon any judge or juror to hear criminal cases and other prosecution matters in a manner contrary to the provisions of this article.