



HUMAN RIGHTS HOUSE
FOUNDATION

Azerbaijan: “Rethink punitive approach to civil society”

Following the constitutional referendum:
Need for further European Union human rights leadership

Briefing note by the Human Rights House Foundation
Due to the risk of reprisals, names of Azerbaijani partner organisations,
which have contributed to this report, are not indicated.

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There is no indication that the human rights situation in Azerbaijan has improved: the release from prison of leading civil society figures is not a sign of systemic change, but a signal of the leverage the international community has to ensure such releases, for example of human rights lawyer Intigam Aliyev, human rights defenders Rasul Jafarov, Anar Mammadli, Bashir Suleymanli, Leyla Yunus, and her husband Arif Yunus, and journalist Khadija Ismayil.

The Ministry of Justice of the Republic of Azerbaijan ordered the Human Rights House Azerbaijan to cease all its activities in March 2011. Since then, the human rights situation in Azerbaijan has continued to deteriorate and the legislation affecting civil society and human rights defenders has worsened, especially with regard to freedom of association and assembly, freedom of expression and opinion, and the right to be a human rights defender. As HRHF documented in its report with Freedom Now, “during 2014, the authorities rounded up the county’s most well-known civil society leaders and audaciously even targeted those who monitored and documented the cases of political prisoners.”¹

Following an official visit to Azerbaijan in September 2016, the United Nations Special Rapporteur on human rights defenders, Michel Forst, called upon Azerbaijan to “rethink [its] punitive approach to civil society.”²

Azerbaijan has indeed accepted visits by various international human rights mechanisms recently. We acknowledge this, but caution that Azerbaijan has not taken, or shown signs of taking, any meaningful steps to implement the recommendations of these mechanisms. As highlighted by the Special Rapporteur himself, assessments by these international mechanisms have all found the same thing: a worsening situation for human rights defenders, civil society, and individual freedoms in Azerbaijan.

We call upon the European Union, and its member States, to show further leadership in addressing the human rights situation in Azerbaijan, and to use the international remedies available to push the authorities to make the long-awaited systemic reforms needed.

¹ Freedom Now and Human Rights House Network, *Breaking point in Azerbaijan*, Washington, DC and Geneva, May 2015, available at <http://humanrightshouse.org/Articles/20947.html>.

² HRHF, “Azerbaijan: ‘Rethink punitive approach to civil society’,” 22 September 2016, available at <http://humanrightshouse.org/Articles/21894.html>.

Release of leading civil society figures

On 17 March 2016, the authorities in Azerbaijan released more than a dozen political prisoners, as part of a presidential pardon of 148 detainees on the eve of the spring Novruz holiday (Azerbaijan New Year celebration). Following this, and other recent releases, Intigam Aliyev, Anar Mammadli, Rasul Jafarov, Arif and Leyla Yunus, and many other human rights defenders, journalists, and activists were released from prison:

- On 9 December 2015, human rights defender Leyla Yunus was released on probation. Her husband Arif Yunus was released a month earlier, on 12 November 2015. They were not able to leave the country until 19 April 2016, when they were allowed to travel to the Netherlands to receive medical care for their deteriorating health.³
- On 17 March 2016, the Baku Court of Appeals converted the six-year prison sentence of journalist Rauf Mirkadirov to a five-year suspended sentence, thus effectively releasing him from custody.
- Those released as part of the presidential pardon of 17 March 2016 include Rasul Jafarov, Head of the Human Rights Club, an organisation established in 2010 to protect human rights and freedoms in Azerbaijan, and Anar Mammadli, Chairman of the Election Monitoring and Democracy Studies Centre (EMDS), an organisation that has been carrying out independent election monitoring in Azerbaijan since 2001.⁴
- On 28 March 2016, Intigam Aliyev was released following the Azerbaijan supreme court's decision to convert his seven-and-a-half-year prison sentence to a suspended term for the rest of the sentence. Intigam Aliyev is a prominent human rights lawyer and a mentor for other lawyers and activists. When detained, Intigam Aliyev represented many Azerbaijanis at the European Court of Human Rights. His release from prison is only conditional and he still faces restrictions, including on his right to travel.⁵ The charges against him and his detention have deprived many Azerbaijani citizens of their right to appeal and seek justice before the court, and it is only with full rehabilitation of his rights that he will be able to continue this essential work.
- On 25 May 2016, the Supreme Court of Azerbaijan upheld Khadija Ismayil's appeal and released her on probation. Khadija Ismayil is an award-winning investigative journalist⁶. She was arrested in January 2014 and sentenced to 7.5 years in prison⁷. She still faces restrictions, including a ban on travelling abroad for five years.

³ See also: <http://humanrightshouse.org/Articles/21344.html>

⁴ See also: <http://humanrightshouse.org/Articles/21541.html>

⁵ See also the final statement of the Working Group on Arbitrary Detention:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E>

⁶ See also: <http://humanrightshouse.org/Articles/21589.html>

⁷ See also: <http://humanrightshouse.org/Articles/21130.html>

Continued systematic use of arbitrary detention

The United Nations Working Group on Arbitrary Detention (WGAD) visited Azerbaijan from 16 to 25 May 2016.⁸ In its preliminary findings, while taking in account the pardon decree of 17 March 2016 that resulted in the release of many political prisoners and prisoners of conscious, the WGAD did not observe any significant change in the country with respect to Azerbaijan depriving persons of their liberty. The WGAD held that Azerbaijan continues to detain human rights defenders, journalists, and political and religious leaders on criminal or administrative charges to silence them and to impair their basic human rights and fundamental freedoms. These practices are an abuse of authority and violate Azerbaijan's obligations to uphold the rule of law.

The WGAD was able to visit recently arrested student activists Bayram Mammadov and Giyas Ibrahim at the Kurdakhani pre-trial detention facility. The pair are accused of having tagged a statue of late President Heydar Aliyev with the phrase "Happy Slave Day." Both reported having being subjected to violent interrogation techniques at a police station before being sentenced to four-months pre-trial detention for drug-related charges by the Khatai District Court. During the visit, the working group observed what seemed to be "physical sequels" of the treatment they were subjected to.

Beyond the use of arbitrary detention to target human rights defenders, journalists and activists, the WGAD observed that, in Azerbaijan, people could be deprived of liberty for administrative and criminal offences. These administrative offences are defined in broad and imprecise terms, which enable the authorities to deprive persons of their liberty on unreasonable grounds, such as so-called offences of hooliganism and refusal to obey

Constitutional referendum of 26 September:
Criticism voiced by national and international sources relating to the amendments

The amendments to the constitution were accepted by popular referendum on 26 September by around 90 percent of those that voted, give or take a few percentage points either way for each amendment.

These amendments prolong the presidential term from five to seven years and introduce the posts of first vice-president and vice-president. Other changes relate to restrictions on the right to freedom of assembly, which will now be contingent on "public order and morality;" and the right to property, which could be restricted in the interests of "social justice and effective land use." In addition, Azerbaijani citizenship can be withdrawn "in accordance with the law."

On 19 August, the Election Monitoring and Democracy Studies Centre (EMDS) published an opinion on the proposed amendments. EMDS notes that the Referendum Act "proposes to significantly increase the power of the executive branch at the expense of the legislative branch depressing the division of power." The Act will further restrict human rights, particularly property rights, freedom of expression and assembly, and the right to citizenship.

On 20 September, the Venice Commission published its preliminary opinion on the constitutional referendum. The Commission criticises the procedure for the adoption of the reforms as well as the proposed institutional reforms themselves. It states that the reform "weakens further the Parliament and even judiciary, consolidating the already disproportionate power of the President and making the government even less accountable."

It also criticises "the lack of clarity of the rules set in the Constitution for passing such modifications, the facts that the Parliament was not formally involved in the process, and that the time for public discussions about the reform was insufficient."

⁸ The final statement of the Working Groups on Arbitrary Detentions is available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20021&LangID=E>

public authorities. The sentences for these administrative offenses are often disproportionate.

Azerbaijan's practice of arbitrary detention shows that the judiciary is not independent and that the authorities do not respect basic principles of the rule of law – be it depriving persons of their right to legal counsel, or failing to protect them from torture and other forms of ill treatment.

This is reflected in the poor detention conditions in the country; the repressive environment in which human rights defenders, lawyers and journalists operate; and the general lack of acceptance by the authorities of peaceful dissenting voices, indispensable for a true and real dialogue between the government and civil society.

Crackdown against dissenting voices in the electoral period

The wave of arrests during the electoral period leading to the 26 September 2016 constitutional referendum illustrates the continued use of arbitrary detention by the authorities in Azerbaijan.

A popular referendum on constitutional changes should be an opportunity for true public debate on the future of the State's institutions. Everyone should be allowed to freely and safely express their opinions during a campaign, as the right to participate in public life includes disagreeing with the government's proposals. However, instead of promoting a popular debate, the Azerbaijani authorities started a new wave of their crackdown on civil society and opposition, which is directly related to the referendum.⁹

The outcome of the referendum is completely overshadowed by the events that preceded and accompanied it, and it cannot be considered a legitimate reflection of the people's will. The authorities silenced independent voices who criticised the process and showed that they have not abandoned the "revolving door policy" of politically motivated arrests, in which the authorities release some people while arresting others.

During the weeks that preceded the referendum, intimidation and arrests of those raising their voice to criticise the process became routine. Journalists, bloggers, human rights defenders and political opponents were targeted by the authorities in an attempt to stop the spreading of information about the referendum and their participation in protest rallies. The authorities tried to prevent protest actions from taking place and on some occasions attacked and detained demonstrators and journalists.

Natig Jafarli of the Republican Alternative Movement (ReAl) was arrested on 12 August following his peaceful action and criticism of the referendum. Prior to his arrest, ReAl, a movement co-founded by Natig Jafarli, had been campaigning against the referendum and had begun to collect signatures as a referendum campaign group. Natig Jafarli has been charged by a court in Baku for "illegal business" and "abuse of official powers – when such actions lead to serious consequences or are committed with the purpose of influencing the outcome of an election (referendum)" and was sentenced to four-months of pre-trial detention. The use of "organisational charges" against human rights defenders, journalists and activists is a well-known method to attempt to legally justify a politically motivated detention, in addition to charges such as hooliganism or consumption of illegal narcotics. Natig Jafarli's home was searched during the night and two computers and several legal documents were seized. Finally, on 9 September, a Baku court ruled to free Natig Jafarli.

⁹ See also: <http://humanrightshouse.org/Articles/21835.html>.

Two other ReAl activists, Elshan Gasimov and Togrul Ismayilov,¹⁰ were also arrested and sentenced to seven days of administrative detention on 15/16 August. According to contact.az, they were arrested by “persons in civilian clothing” while trying to collect printed campaign material.

The prominent activist and former political prisoner Bakhtiyar Hajiyev was arrested on 15 August and could be, according to his lawyer¹¹, charged with disorderly conduct. "Yesterday I got into an altercation with traffic police and was injured; the traffic police employed physical force. Now we are going to the 27th district police station. Either these [policemen] must be punished, or I must leave the country. There is no other option." Bakhtiyar Hajiyev wrote on his personal Facebook page.

Information about Elgiz Gahraman of NIDA Youth Movement, who had been missing for four days in August, revealed that he is being detained by the Department Against Organized Crime, of the Ministry of Internal Affairs. It is reported that he has been sentenced to four months of pre-trial detention and could face 5 to 12 years in prison on drug charges. Meydan TV reports that there is some speculation that his arrest could be linked with the other arrested activists.

On 17 September, an estimated 10,000 people attended a protest organised by the Azerbaijani Popular Front Party. Slogans heard at the rally included: “We’ll sooner die than leave the square,” “No to monarchy! End to thievery,” “We want Azerbaijan as portrayed by AZTV” [state media], and “Sign the Association Agreement with the EU.” According to the deputy chairman of the Popular Front Party, in many parts of the country the police have blocked the roads to hundreds of activists who were heading to the rally in Baku. After the rally, the Baku police were seen attacking and detaining demonstrators, as well as journalists and civil rights activists. According to initial estimates, the police arrested 51 people. Most of the detainees were members of the Azerbaijani Popular Front Party. Journalist Orkhan Carchi, former editor of Carci.az website, was also detained. Most of the detainees were released by 19 September 2016. Some 12 Popular Front Party members, including Orkhan Charci, were sentenced to eight days of administrative detention for disobeying police orders, and one political activist was fined (200 AZN). Several of them were detained¹².

Continued repression of civil society in the recent period

Authorities in Azerbaijan have not taken a single step to reform the systemic nature of the repression against civil society. While some leading civil society figures were released from prison, the work of human rights defenders remains *de facto* criminalised, which the authorities hide behind periodic releases of human rights defenders, journalists, and activists, who should never have been in prison in the first place.¹³

¹⁰ See Also : <http://www.contact.az/docs/2016/Social/081500165690en.htm#.V7LnpZN96rN>

¹¹ See also : <http://www.contact.az/docs/2016/Social/081500165641en.htm#.V-PrkxZOEzn>

¹² More information about the rallies of 17 September, including video depicting the clashes with the police are available here: <https://www.meydan.tv/en/site/society/17505/> and <https://www.meydan.tv/ru/site/news/17371/>

¹³ HRHF, “PACE side event: A year of attempts to hide dire human rights record,” 22 June 2016, available at <http://humanrightshouse.org/Articles/21726.html>.

Crackdown on civil society and human rights defenders

Civil society has been paralysed as a result of legislative amendments since 2009.

Human rights defenders have been accused by public officials to be a fifth column of the Western governments, or foreign agents, which has led to a misperception among the population of the truly valuable role played by civil society. Activists promoting fundamental freedoms and criticising violations have been accused of being political opponents, touting values that run counter to those of their society or culture. They have been denounced as politically or financially motivated actors, and attacked, threatened, or brought to court and sentenced under charges such as “hooliganism,” “money-laundering,” “provocation,” “drug-trafficking,” and incitement to overthrow the State. Defenders have faced smear campaigns in an attempt to discredit their work, by relegating them to political opposition, or indeed as traitors. This demonisation of defenders has been exacerbated by a lack of awareness within civil society of the mechanisms they can resort to and tools they can use to boost their legitimacy and protection.

Legislation has been widely used to prevent non-governmental organisations (NGOs) from carrying out their activities and receiving foreign grants. The authorities impose strict administrative rules to arbitrarily and indefinitely delay the registration of NGOs, while foreign donors need to go through an onerous multi-tier system that makes funding of local NGOs practically impossible.¹⁴ In its 2014 opinion on amendments to Azerbaijan’s NGO law, the Venice Commission concluded that “globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law.”¹⁵

Following the above-mentioned visit to Azerbaijan in September 2016 of the Special Rapporteur on human rights defenders, he considered that over the last two to three years, the civil society in Azerbaijan has faced the worst situation since the independence of the country: dozens of NGOs, their leaders, employees and their families have been subject to administrative and legal persecution, including the seizure of their assets and bank accounts, travel bans, enormous tax penalties and even imprisonment.

Crackdown on independent media

Independent media also works under the threat of arbitrary measures by the authorities.

Despite protection under national and international law that guarantees the right to freedom of expression, Azerbaijan has continued to face challenges in ensuring an enabling environment for the media and journalists. Independent media outlets have been frequently targeted.

Their licenses have often been withdrawn for the expression of critical views. For example, in December 2014, the Government suspended the activity of Radio Free Europe / Radio Liberty in Azerbaijan, in the context of a broader criminal persecution against civil society.

¹⁴ More information available here: <http://www.xural.com/2015-cso-sustainability-scores-for-azerbaijan>.

¹⁵ European Commission for Democracy through Law, Opinion on the Law on non-governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan, Venice Commission (December 2014), available at [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2014\)043-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2014)043-e).

Meydan TV was forced to terminate its broadcast in the same month in 2014. Its editor and director both had to flee abroad, and many of its journalists are banned from travelling abroad and their bank accounts are still frozen.

In July 2016, the offices of ANS TV/Radio were closed as part of an investigation related to its coverage of the attempted coup d'état in Turkey.

Need for greater international attention: call for renewed EU efforts

A year ago, in September 2015, the crackdown against dissenting voices in Azerbaijan was at its peak, as was international pressure on the authorities. All main civil society, media and opposition leaders were either behind bars – some of them suffering from serious health conditions – or had been forced to flee the country.

Also in September 2015, the European Parliament adopted a resolution calling for the release of political prisoners in Azerbaijan and requesting the Council to consider “targeted sanctions and visa bans on all politicians, officials and judges involved in the political persecutions.”¹⁶ Thanks to that resolution and to the diplomatic pressure of international organisations and various States, key civil society figures were released.

However, while many are still praising Azerbaijan for its good cooperation, opposition leader Ilgar Mammadov is still behind bars, as well as around 70 other political prisoners whose cases are less under the spotlight. Even those who have been released find themselves in precarious conditions, as they do not have the possibility of freely exercising their work and some of them, including Intigam Aliyev and Khadija Ismayil, are still not allowed to travel.

Furthermore, although many visits of international human rights mechanisms have taken place, including the United Nations Special Rapporteur on human rights defenders and the Working Group on Arbitrary Detention, Azerbaijan must now implement the recommendations of all these visits, as well as previous decisions and recommendations made by the European Court of Human Rights and the Council of Europe, the European Parliament, and the OSCE. Reports without implementation will not end the widespread use of arbitrary detention and the systemic persecution of civil society organisations and human rights defenders, nor will they create the much-needed enabling environment for civil society. Azerbaijan is not showing any sign of willingness to implement the recommendations made by such mechanisms.

As stated in the EU Strategic Framework and Action Plan on Human Rights and Democracy: “The EU will continue to throw its full weight behind advocates of liberty, democracy and human rights throughout the world.”¹⁷

We acknowledge the efforts of various European Union institutions, including its Parliament and its Special Representative for Human Rights, to put pressure on Azerbaijani authorities to release prominent political prisoners.

¹⁶ European Parliament resolution of 10 September 2015 on Azerbaijan. Available at :

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2015-0316&language=EN&ring=P8-RC-2015-0856>.

¹⁷ Council of the European Union, “EU Strategic Framework and Action Plan on Human Rights and Democracy,” 25 June 2012, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf.

Given the lack of any structural changes, we call upon the European Union, and its Member States, to further show leadership in addressing the human rights situation in Azerbaijan. It must:

- **Hold Azerbaijan to international standards and its obligations as a Council of Europe member;**
- **Use international remedies available at the Council of Europe and the United Nations to push the authorities to implement the long-awaited systemic reforms needed;**
- **Urge the Azerbaijani authorities to repeal travel bans against human rights defenders, journalists and activists, in particular human rights lawyer Intigam Aliyev and journalist Khadija Ismayil, and to lift all ongoing investigations into human rights organisations.**

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About the Human Rights House Foundation (www.humanrightshouse.org)

The Human Rights House Foundation empowers, supports, and protects human rights defenders and their organisations. The Foundation establishes Human Rights Houses and unites them in an international network to promote the universal freedoms of assembly, association and expression, and the right to be a human rights defender. More than 100 human rights organisations work together in 16 Human Rights Houses.

The Human Rights House Foundation is based in Oslo, with an office in Geneva and representation in Brussels and Tbilisi.

Prior to being forced to cease activities in March 2011, the Human Rights House Azerbaijan served as an independent meeting place, a resource centre, and a coordinator for human rights organisations in Azerbaijan. In 2010, 6,000 human rights defenders, youth activists, independent journalists, and lawyers used the facilities of the Human Rights House Azerbaijan, which had become a focal point for promotion and protection of human rights in the country. The House ceased all its activities following an order by the Ministry of Justice on 10 March 2011.