



POLITICALLY MOTIVATED ADMINISTRATIVE DETENTIONS

Politically Motivated Administrative Detentions in Azerbaijan

1. Summary

Election Monitoring and Democracy Studies Centre (EMDS) prepared this report in order to investigate human rights violations associated with the increasing use of administrative detention as a tool of political repression. The purpose of the report is to explore true reasons behind administrative detentions and to propose recommendations to relevant stakeholders for addressing the issue.

The report is based on information collected from detainees and their lawyers, as well as verified media reports. The organization recorded 131 politically motivated administrative detentions during the period between January 2018 and February 2019. The report also refers to previous administrative detentions for illustrative purposes.

The amendments made to the Code of Administrative Offences further exacerbated the issue significantly increasing the maximum duration of administrative detention from 15 days to 90 days. The main reason behind the amendments was restricting the freedom assembly by preventing peaceful demonstrations held in the city centre.

The politically motivated administrative detentions are grouped into three categories in the report based on the intentions behind them: (1) restricting freedom of assembly, (2) limiting freedom of expression and (3) discouraging civic participation.

EMDS findings show that the authorities have increased administrative detentions of activists for participation in unauthorized assemblies since 2016. Before 2016, the authorities used administrative detentions prior to and during unauthorized assemblies. After 2016, they started to administratively detain participants of authorized assemblies as well.

Courts adopt rulings without any substantive investigation and base their justification solely on testimonies of police officers who carried out the detention. Courts do not attempt to identify or question witnesses of defendants.

In its rulings on Azerbaijan, the European Court of Human Rights (ECtHR) concluded that administrative detentions violated the rights to liberty, fair trial and freedom of assembly guaranteed by the European Convention on Human Rights (the Convention). The ECtHR has found these violations in **21** cases from **72** applicants.

EMDS believes that administrative detention of government critics are not related to committed offences but is a political tool of punishment for their political, social and media activities. In order to address the issue, it is important to improve the domestic legislation on freedom of assembly that allows for administrative detention and make it in line with the requirements of the European Convention of Human Rights. For this purpose, the executive authorities should end the practice of using administrative detention as a tool of political repression, the courts should ensure fair trial and hearings of the cases and the parliament should close legal loopholes that allow for abuse of administrative detention as a measure of punishment.

EMDS (former EMC) is working towards the promotion of free and fair elections, protection of political freedoms and human rights since 2001. The organization has carried out monitoring of 15 elections and training more than 14,000 volunteers in election observation.

EMDS is a member of the European Network of Election Monitoring Organizations (ENEMO), Human Rights House Azerbaijan, Eastern Partnership Civil Society Forum, the European Platform for Democratic Elections (EPDE) and the Global Network of Domestic Election Observers.

1. Introduction

Administrative detention is one of the main tools of repression used against government critics in Azerbaijan. Recent amendments to the law made it possible for courts to sentence activists up to three months of administrative detention.¹

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EMDS stresses that the real number of politically motivated administrative detentions is likely to be much higher. But many of them go without being reported or covered by media. The document also includes multiple detentions of one person.

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2. The legal framework for administrative detention

a. International commitments

Administrative detention is a restriction of the right to liberty which is guaranteed by a number of international documents that Azerbaijan is party to and its domestic legislation. One of very first such documents is the Universal Declaration of Human Rights which, in its Article 3, stipulates that everyone has the right to life, liberty and security of person.² The first binding international document guaranteeing the right to liberty was the UN's International Covenant on Civil and Political Rights. Article 9 of the Covenant recognizes everyone's right to liberty and security of person and prohibits deprivation of liberty that is not based on grounds and in accordance with the procedure as are established by law. The General Comment 35 of the UN Human Rights Committee provides a broad interpretation of Article 9 and describes in detail in which cases, restriction of person's liberty, including administrative detention, is legal or arbitrary.³

The European Convention on Human Rights describes the right to liberty even in more details. It stipulates the right to liberty and security of person in its Article 5. It is the only

¹ The Code of Administrative Offenses of the Republic of Azerbaijan, Article 30 <http://www.e-ganun.az/code/24>

² Universal Declaration of Human Rights, the United Nations, Article 3, <http://www.un.org/en/universal-declaration-human-rights/>

³ <https://www.refworld.org/docid/553e0f984.html>

intergovernmental treaty that specifies the conditions for deprivation of liberty making all other forms of deprivations are considered in violation of the convention.⁴

The judgments of the European Court of Human Rights (ECtHR) on violation of the right to liberty, along with rights to freedom of expression and assembly play an important role in identifying human rights violations associated with administrative detentions as well.

The resolution 2122 of the Parliamentary Assembly of the Council of Europe (PACE) on administrative detention raised concerns that some members of the Council of Europe “abused administrative detention to punish political opponents, obtain confessions in the absence of a lawyer and/or under duress, or apparently to stifle peaceful protests”.⁵ The resolution called the Member States to refrain from abusing administrative detention, and “placing political opponents, human rights activists or journalists in administrative detention in order to coerce or persuade them by other means into confessing to a criminal offence”.

b. Domestic legislation

The Constitution of Azerbaijan stipulates protections from arbitrary detention and imprisonment in its Article 28. It states that “right to liberty may be restricted only in accordance with the procedure prescribed by law, by detention, arrest or imprisonment”.⁶

Administrative detention is regulated by the Code of Administrative Offenses which determines administrative liability and penalizes persons committing an administrative offence. The Code envisages administrative detention only in exceptional cases.⁷ Several articles of the Code stipulate administrative detention as a measure of punishment, but government critics are usually sentenced to administrative detention on charges of minor hooliganism, violation of the rules of holding an assembly and refusing to obey lawful demands of the police.

3. Facts about politically motivated administrative detentions

a. Restriction of freedom of assembly by administrative detentions

Restricting freedom of assembly was the main reason behind the amendments to the Code of Administrative Offenses in 2013 which significantly increased the maximum duration of administrative detention from 15 days to 90 days. Courts usually sentenced activists to 5-10 days of detention before the amendments. This increased to 10-60 days on average. The amendments also significantly increased financial penalties for attending an unauthorized assembly.⁸ The reason behind the restrictions was the series of peaceful rallies held in the city centre of Baku protesting non-combat military casualties under the slogan of “End Soldier Deaths” in January and February 2013. The Parliament adopted the amendments in May 2013.

⁴ European Convention on Human Rights, Article 5, https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ ‘Administrative Detention’, PACE Resolution 2112, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22958&lang=en>

⁶ <https://bit.ly/2FfmjQ8>

⁷ The Code of Administrative Offences of the Republic of Azerbaijan, Article 30, <http://www.e-ganun.az/code/24>

⁸ <https://www.refworld.org/docid/51a461074.html>

The amendments led to a decrease in peaceful protest rallies after 2013. Facing lengthy administrative detentions of its members and hefty financial penalties, political parties have preferred holding peaceful assemblies only agreed with the government.

The authorities, however, launched a new trend of applying administrative detention to authorised rallies of opposition parties since 2016.⁹ Police summoned **229** people across the country prior to and after rallies organized by the National Council of Democratic Forces, an umbrella opposition organization, during September-October 2017. **18** of them were sentenced to 10-30 days of administrative detention on charges of resisting the police. During three authorized rallies of the National Council protesting the 11 April snap Presidential Elections in 2018, **174** people were summoned to the police and **17** were sentenced to administrative detention from 10 days to 30 days, again on charges of resisting the police.

Republican Alternative party (REAL) and a group of civil society activists organized a visit to a monument on 28 May 2018 to mark the 100th anniversary of the establishment of the Azerbaijan Democratic Republic. Participants wanted to continue the visit with a walk towards the Baku Boulevard but the police did not allow it. A day later the walk, **10** REAL members were summoned to the police and **four** of them, including the deputy chair of the party, were sentenced to 25-30 days of administrative detention. The spokesperson of the Ministry of Interior admitted in a statement that their detention was related to the march and the freedom of assembly.¹⁰

The new wave of administrative detention aiming at preventing assemblies was launched in January 2019. More than **40** activists were administratively detained after the three demonstrations and the 19 January rally protesting new charges brought against imprisoned blogger Mehman Huseynov.¹¹ Police summoned more than **200** people and called hundreds more on the phone asking about their participation in the rally.

Furthermore, **30** people gathered in front of the Baku Grave Crimes Court during the trials of businessperson Saleh Rustamov and four others in the case related to the financing of the opposition Popular Front party between 7th and 30th January were detained by the police. **Seven** of them were sentenced to administrative detentions for resisting the police.

Activist Fuzuli Huseynov was detained by the police several times for peacefully protesting by silently holding photos of political prisoners in the city centre in Baku. His last detention was on 16 June 2018 when he spent 10 days in jail.¹² His son Rafael Huseynov was sentenced to 30 days of administrative detention for holding a poster that said free all political prisoners on 25 January.¹³

The European Court of Human Rights also recognized in its judgments that the authorities used administrative detention to prevent people from taking part in assemblies and to punish participants.¹⁴

b. Administrative detentions restricting freedom of expression

⁹ www.hrw.org/sites/default/files/report_pdf/azerbaijan1016_web.pdf

¹⁰ <https://bit.ly/2qP6s00>

¹¹ <https://bit.ly/2FIZHu8>

¹² <https://www.amerikaninsesi.org/a/hebs/4441712.html>

¹³ <https://www.azadliq.org/a/29739364.html>

¹⁴ Huseynli and others v. Azerbaijan (Application no. 67360/11, 67964/11 and 69379/11, §147, 11.05.2016), <http://hudoc.echr.coe.int/eng?i=001-160429>

The authorities also use administrative detention as a punishment mechanism for free speech. Punishing activists for their posts on social media stands at the centre of it. For example, former defence minister Rahim Gaziyeu was detained by the police on 25 December 2017 after criticising the ruling party, one of its officials¹⁵ and the president.¹⁶ The Narimanov District Court sentenced him to 10 days of administrative detention for resisting the police on the next day. The law prohibits the application of administrative detention on women above 60 years old and men above 65. But the court did not consider it in the case of the 70-year-old former minister. He was released after five days with the decision of the appeal court. But the ECtHR concluded that his detention was against the legislation of Azerbaijan¹⁷ and Article 5 of the European Convention.¹⁸

Growing public disgruntlement on social media resulted in administrative detention of a number of people in July 2018. The reasons behind the disgruntled public were the countrywide power outage and news about the torture of the suspect in the case of attempted murder of Ganja city Mayor. Both happened on 3 July. The Ministry of Interior, in its statement published on 9 July, noted that **18** people committed administrative offences and **14** of them were sentenced to administrative detention.¹⁹

The cases of police brutality and detention of journalists and bloggers covering various events have also increased. In the last year, journalist Afgan Sadigov was detained while filming families of those fallen war veterans protesting in front of the Presidential Administration.²⁰ Police detained reporter of internet TV Channel 13 Nurlan Gahramanov for covering the protest rally calling for the release of video blogger Mehman Huseynov.²¹ Both were sentenced to 30 days of administrative detention by courts.

c. Administrative detention discouraging public activism

Administrative detention is also used to depress all forms of activism, social and political. It is applied to activists and their family members. For example, young lawyer studying in the USA Emin Aslanov was detained by a group of plain clothed police on 4 June 2018. His whereabouts were not disclosed to his family and lawyer for more than 24 hours. Only a day later, it was known that he was taken to the Main Directorate on Combating Organized Crimes and sentenced to 30 days of administrative detention by the Narimanov District Court for resisting the police.²² After his release, Aslanov said that police questioned him about his past and future work as an activist.²³

The authorities also target family members of government critics, especially those living abroad in exile. Six family members of Azerbaijanis living in Europe were sentenced to 30 days of administrative detention for their participation in protest demonstrations organized in several European cities in February 2018.

Political activist Zafar Ahmadov was detained by the police and taken to the Khatai District Police on 27 July 2018. The Khatai District Court sentenced him to 30 days of administrative

¹⁵ <https://bit.ly/2EgbwkU>

¹⁶ <http://www.turan.az/ext/news/2017/12/free/Social/en/67863.htm>

¹⁷ The Code of Administrative Offences, Article 30, <http://www.e-qanun.az/code/24>

¹⁸ Article 5 of the European Convention guarantees the right to liberty and security of person

¹⁹ <https://bit.ly/2XwA4iu>

²⁰ <https://bit.ly/2VC7V83>

²¹ <https://bit.ly/2Tu2cnk>

²² http://www.europarl.europa.eu/doceo/document/E-8-2018-003392_EN.html

²³ <https://smdtaz.org/en/siyasi-motivli-s%C9%99yah%C9%99t-qadagalari/>

detention for resisting the police.²⁴ Ahmadov said his detention was related to his work in coordinating support to families of political prisoners and activism on social media.

4. Court rulings on administrative detentions

a. Violation of the right to fair trial

The first instances that review administrative offences are general district courts. Government critics are usually brought to courts in handcuffs while this is not a practice in regular administrative cases. Court hearings are very brief, rushed and superficial. Although the hearings are formally open, they are almost always held behind closed doors. Defendants are not allowed sufficient time to organize an effective legal defence, they are not represented by their own lawyers and instead, the state provides government-controlled lawyers.²⁵

Courts adopt rulings without any substantive investigation and base their justification solely on testimonies of police officers who carried out the detention.²⁶ Courts do not attempt to identify or question witnesses of dependents.

The appeal court is the final instance where a case about administrative offence can be taken to. Defendants are usually represented by their own lawyers on this stage. However, appeal courts upheld the ruling of lower courts without any investigation and deny all motions of the defendant's side. In very rare occasions, the appeal court shortens the sentence.

b. Judgments of the European Court of Human Rights on administrative detentions

The European Court of Human Rights (ECtHR) concluded that administrative detentions violated the rights to liberty, fair trial and freedom of assembly in its rulings on Azerbaijan. The ECtHR has found these violations in **21** cases from **72** applicants. In two cases, the ECtHR recognized that applicants were subjected to torture and mistreatment, while in two other cases the authorities interfered with the applicants appeal to the ECtHR which constituted the violation of Article 34 of the Convention.

The first judgment of the ECtHR on administrative detention was in the case of **Gafgaz Mammadov v. Azerbaijan**.²⁷ In this case, the ECtHR determined that requiring an advance permission for a peaceful assembly or demonstration instead of mere notification was in violation of the legislation.²⁸ Therefore, the ECtHR established that dispersion of participants of assemblies and their administrative detention constituted a violation of freedom of assembly and their administrative detention was a violation of freedom of assembly and the right to liberty guaranteed by the European Convention.

The ECtHR adds that the applicants were formally charged with failure to comply with a lawful order of a police officer or with minor hooliganism, but they were in fact detained for participating in opposition protests. Domestic courts decided on administrative detentions

²⁴ <http://www.eng.kavkaz-uzel.eu/articles/43904/>

²⁵ Huseynli and others v. Azerbaijan (Application no. 67360/11, 67964/11 vø 69379/11, §123, 11.05.2016), <http://hudoc.echr.coe.int/eng?i=001-160429>

²⁶ Ibid, § 125-134

²⁷ Gafgz Mammadov v. Azerbaijan (Application no. 60259/11, 14.03.2016)

²⁸ Ibid, §55.

without investigating whether the police had the authority to interfere with the demonstration.²⁹

The Court provided an extensive interpretation of administrative detentions in the case of *Huseynli and others v. Azerbaijan*.³⁰ In this case, the Court reviewed the year 2011 pointing out at demonstrations and rallies held in Azerbaijan, participants of these assemblies being detained and imprisoned, attacks on human rights organizations and the closure of their offices.³¹ The ECtHR stated that the detention of three political activists, who played active roles in organizing 2 April 2011 demonstration, just two days before the event on charges of minor hooliganism and refusing to comply with lawful order of the police did not have a legal basis.³² The ECtHR noted that the above-mentioned charges were merely a pretext while the true intention behind the detention was preventing applicants from attending the demonstration. Therefore the detention without legal basis constituted a violation of the constitutional right to freedom of assembly.

There are also issues with the execution of ECtHR judgments. There are delays in paying compensation to applicants and the shortcomings in legislation and judicial system that make the discretionary application of administrative detention remain unchanged.

The government of Azerbaijan has failed to produce an action plan on addressing these shortcomings requested by the Committee of Ministers of the Council of Europe. In its 6-7 June 2017 session, the Committee stressed that the Azerbaijani government had not executed more than 20 judgments of the ECtHR on the issue.³³ Therefore the Committee called the government to develop a comprehensive action plan without any delay. Because of issues related to the execution of judgments, the Committee has placed Azerbaijan under extended supervision.

5. Conclusions and Recommendations

EMDS believes that administrative detention of government critics are not related to committed offences but is a political tool of punishment for their political, social and media activities. Administrative detentions weaken the foundations of democratic society by restricting people's right to freedoms of expression, assembly and association.

EMDS proposes the following recommendations in order to address the issues in this regard:

For the Parliament:

- To improve the domestic legislation on freedom of assembly that allows for administrative detention, and to make it in line with the requirements of Article 11 of the European Convention of Human Rights;
- To specify the restrictions and intervention that can be made to the freedom assembly in the legislation and to improve the provisions allowing for abuse by the police;
- To address shortcomings in the Code of Administrative Offences and to add provisions stipulating the participation of state prosecutor in proceedings in order to eliminate the cases of judges acting as prosecutors through a legal requirement.

²⁹ Ibid, §108

³⁰ *Huseynli və başqaları Azərbaycana qarşı* (Ərizə N. 67360/11, 67964/11 və 69379/11, 11.05.2016), <http://hudoc.echr.coe.int/eng?i=001-160429b>

³¹ Ibid, §90

³² Ibid, §98-101

³³ <https://bit.ly/2TqBbRJ>

For Executive Authorities:

- To eliminate the practice of using administrative detention as a tool for political pressure and punishment for exercising fundamental freedoms guaranteed by the Constitution, UN documents and the European Convention, including the freedoms of assembly, association and expression;
- To end administrative detention of political activists with the purpose of preventing their participation in assemblies and to hold officials liable for such practices;
- To inform family members about the detention of the person and their whereabouts, and to ensure the presence of a lawyer in a process prior to the trial;
- To implement international commitments of Azerbaijan regarding the right to liberty and ensure the restriction of this right is in line with these international commitments, including the requirements specified in the European Convention of Human Rights;
- To develop an action plan to address the structural problems identified in the judgments of the ECtHR related to the administrative detention and to deliver financial compensation specified in the judgments without delay and within a reasonable timeframe;
- To end the practice of demanding permission for organizing assemblies and to adhere to the requirements of the legislation on providing advance notification.

For the Judicial power:

- To ensure the right to fair trial of people by avoiding reliance only on testimonies of the police that carried out the detention during the trial, carrying out a comprehensive investigation, and hearing other witnesses during before delivering the judgment on cases of administrative detention of activists;
- To held substantive hearings on administrative detention, to ensure the hearings are open to the public and to provide a reasonable time for preparation to the defendant and their lawyers;
- To investigate all evidence (video footage from security cameras, registration book at police stations etc.), to avoid dismissing motions raised by defence side without any justification and to provide reasonable grounds for the judgments.

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