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The Council of Europe’s possible resort to “infringement proceedings” against Azerbaijan for failing to release Ilgar Mammadov is a test of its resolve to right the wrongs

Amnesty International welcomes the 8 December decision¹ of the Committee of Ministers of the Council of Europe to intensify their efforts to ensure the release of the Azerbaijani political activist and prisoner of conscience Ilgar Mammadov, including by actively considering resorting to “infringement proceedings” against Azerbaijan under Article 46.4 of the European Convention on Human Rights. This decision follows the ruling of the Supreme Court of Azerbaijan on 18 November which decided to uphold the seven year-long prison sentence of Ilgar Mammadov, regardless of the European Court of Human Rights (the Court) judgment of May 2014,² finding that Ilgar Mammadov’s deprivation of liberty was a punishment for having criticised the government.

The Committee of Ministers declared Azerbaijan’s continuing arbitrary detention of Ilgar Mammadov as “a flagrant breach of the obligations” under the European Convention on Human Rights. In particular, the Committee stated that by not releasing Ilgar Mammadov from imprisonment, Azerbaijan had violated Article 46.1 of the Convention, which obliges the country to “abide by the final judgment of the Court”. The Committee also “affirmed their determination to ensure the ... [release of Ilgar Mammadov] by considering using all the means at the disposal of the Organisation, including under Article 46, paragraph 4 of the European Convention on Human Rights”.

Article 46.4 of the Convention stipulates that “infringement proceedings” can be resorted to by the Committee of Ministers when it considers that a Council of Europe Member State refuses to abide by a final judgment of the Court.³ The Court ruled in May 2014 that Ilgar

¹ Decision of the Committee of Ministers DH-DD(2016)1296:
https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016806c4554

² Ilgar Mammadov v. Azerbaijan (Application No. 15172/13), 22 May 2014, available at <http://hudoc.echr.coe.int/eng?i=001-144124>

³ Article 46.4, European Convention of Human Rights: “If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.”

Mammadov's arrest and prosecution contravened the European Convention on Human Rights, found that there had been no evidence of him having committed a crime, and that the actual purpose of his detention had been to silence or punish him for criticising the government. Following the Court's findings, the Committee of Ministers of the Council of Europe has demanded that Ilgar Mammadov be released without delay. Azerbaijan has failed to release Ilgar Mammadov and implement the Court's May 2014 judgment.

Azerbaijan must respect and protect the rights of those who exercise their human rights peacefully rather than prosecute and imprison them. It must fulfil its international legal obligations and implement the judgment of the European Convention on Human Rights by releasing Ilgar Mammadov immediately and unconditionally. The Committee of Ministers must actively ensure that Ilgar Mammadov is either immediately released or decisively follow through with the procedure under Article 46.4 of the Convention. It is the Committee of Ministers' responsibility to seriously consider using all the tools at its disposal including such enforcement measures to guarantee the goals and the aims of the European Convention on Human Rights and the Council of Europe.

The 8 December decision of the Committee of Ministers was the first explicitly referring to the possible use of the "infringement proceedings" under Article 46.4 for refusal by a Member State of the Council of Europe to abide by the Court's final judgment.

Ilgar Mammadov's case at the Court is not isolated as others have been imprisoned for political reasons in Azerbaijan. In the case of the Azerbaijani human rights campaigner, Rasul Jafarov, the Court equally found that he had been arbitrarily imprisoned for having criticised the government.⁴ Although Rasul Jafarov was set free on the day of the Court's ruling finding Azerbaijan is in breach of the Convention, the criminal convictions against him have not been quashed, his bank accounts in Azerbaijan remain frozen and he is still effectively placed under travel ban.

Background information

Ilgar Mammadov, the leader of the opposition group Real, was arrested in February 2013 after he, together with his colleague journalist Tofiq Yagublu, travelled on 23-24 January 2013 to the northern Azerbaijani city of Ismayili to observe demonstrations and riots that were taking place there at the time. People in Ismayili had taken to the streets in protest after the nephew of the local governor reportedly assaulted a local man in a road rage incident. Ilgar Mammadov and Tofiq Yagublu, who observed and reported on the events, were charged with inciting anti-government riots.

In March 2014, the Shaki Court of Grave Crimes in Azerbaijan found the two men guilty of the charges and sentenced Ilgar Mammadov to seven years and Tofiq Yagublu to five years in prison. Amnesty International recognised Ilgar Mammadov and Tofiq Yagublu as prisoners of conscience, since they were deprived of liberty solely for the peaceful exercise of their human rights.

⁴ Rasul Jafarov v. Azerbaijan, (application no. 69981/14), 17 March 2016, available at <http://hudoc.echr.coe.int/eng?i=001-161416>

The European Court ruled, in May 2014, that Azerbaijan had violated Articles 5.1.c, 5.4, 6.2 and Article 18 taken in conjunction with Article 5.⁵ The Court found that the actual purpose of the impugned measures was to punish the applicant for having criticised the government. The judgment became final on 13 October 2014.

Tofiq Yagublu was released in March 2016 under a presidential pardon order.

The “infringement proceedings” was introduced by Protocol 14 to the European Convention on Human Rights. It allows the Committee of Ministers to refer to the Court what it considers to be a refusal by a state party to the Convention to abide by a final judgment of the European Court of Human Rights (Art 46.4 of the European Convention on Human Rights).

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⁵ Ilgar Mammadov v. Azerbaijan (Application No. 15172/13), 22 May 2014