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Azerbaijan: Freedom of expression restricted further, NGO leader persecuted

This week, the Azerbaijani government has taken worrying steps to further restrict freedom of expression and association with the arrest of a prominent civil society activist and the unexpected adoption of new amendments to legislation regulating the activities and registration of NGOs by the parliament on 16 and 17 December 2013, respectively. Unannounced changes to administrative requirements have placed grant dependent NGOs at risk of inadvertent errors and the threat of prosecution.

NGOs and Civil Society

Coming on top of new legislation placing additional restrictions on independent NGOs adopted earlier this year, on 17 December 2013, additional amendments were unexpectedly put forward by the Legal Policy and State-Building Committee for consideration by parliament and were adopted the same day.

At the time of writing, full details of all the amendments were not available, but according to media reports and information from Azerbaijani civil society, changes include increases to existing fines; the introduction of new offences punishable by fines, particularly targeting the directors of national and foreign NGOs; the introduction of additional administrative requirements and increased checks; and additional triggers for temporary suspension and permanent banning of national and foreign NGOs in Azerbaijan.

The cumulative effect of these amendments will be to further restrict the space for freedom of expression and association in Azerbaijan.

Furthermore, Amnesty International has received reports of apparently arbitrary and undisclosed changes to regulations regarding the submission of copies of grant agreements between foreign NGOs and registered Azerbaijani NGOs. In one case, Rashid Hajili, the chairman of the registered Media Rights Institute (MRI), told Amnesty International that a copy of an agreement between MRI and a foreign NGO was rejected by the Ministry of Justice, because the new requirements demanded the stamps of the foreign NGO donor on every page of the agreement, and the submission of the agreement with stitched binding.

The case against Anar Mammadli and EMDS

In addition to new restrictive legislative and regulatory changes, the prosecution of civil society activists has continued, with the targeting of the leader of a prominent NGO.

At approximately 5pm on 16 December 2013, Anar Mammadli, the Chairman of Azerbaijan's well respected, but unregistered election watchdog – the Election Monitoring and Democracy Studies Centre (EMDS) - was called in for questioning at the Prosecutor General's Office and arrested soon after by police. He was taken to Nasimi District Court, which authorised his pre-trial detention for three months, pending his trial on charges of "illegal enterprise", tax evasion and "abuse of authority with grave consequences or the intent to influence elections", under Articles 192.2.2, 213.1 and 308.2 of the Criminal Code respectively.

The statement accuses Bashir Suleymanli of withdrawing cash from the bank account of EMDS' partner NGO, the registered Volunteers' International Cooperation (VIC) in order to pay employees hired by EMDS to fulfil a joint project with VIC on the monitoring of the October 2013 presidential election. Bashir Suleymanli was in a position to do so in his capacity as Deputy Director of VIC and the Executive Director of EMDS. This sum is considered by prosecutors to be a private transaction and therefore taxable, despite the exemption of NGOs from tax payments on received grants. No justification was given for the charge relating to abuse of authority.

During his hearing, Anar Mammadli was denied the opportunity to be represented by his own lawyer, and was only able to meet with his lawyers the following day, on 17 December.

His NGO came under investigation by the authorities on 27 October, soon after it issued critical reports documenting widespread electoral violations during the October 2013 Presidential Election, which saw Ilham Aliyev re-elected for a controversial third term.

According to Anar Mammadli, who spoke with Amnesty International in the weeks before his arrest, investigators from the Grave Crimes Investigation Department of the Prosecutor General's Office questioned him and three other members of EMDS and at least one member of VIC from 27-30 October. Each round of questioning lasted for over three hours.

At 11am on 31 October, officials from the Grave Crimes Investigation Department of the Prosecutor General's Office raided the head office of EMDS in Baku and presented a court order from the Nasimi District Court. Officials spent over five hours trawling through various documents, including leaflets, event programmes and financial documents, and left the office at around 5pm, taking with them 20 folders full of documents and two desktop computers.

Bashir Suleymanli, and Chairman of the VIC, Elnur Mammadov, were called for questioning at the Prosecutor General's Office again on 1 and 4 November. The questioning of all three senior managers of the two NGOs continued throughout November and the first half of December, in which period all NGO members fully cooperated with the authorities. Bashir Suleymanli is facing the same set of charges but is not in pre-trial detention. Elnur Mammadov is facing an additional charge of forgery under Article 313 of the Criminal Code of Azerbaijan.

During this period, Anar Mammadli was placed under travel restrictions and had to miss the EU Eastern Partnership Vilnius Summit in late November, to which he had been invited.

After his arrest, his lawyer Rashid Hajili told Amnesty International that the reasons given by the prosecutor for seeking Anar Mammadli's pre-trial detention were based on the assertion that he was likely to abscond due to his frequent international travel and contacts abroad, the purported likelihood of him "influencing other witnesses", and continuing to engage in "illegal enterprise". No evidence was provided by prosecutors or requested by the court to justify this assertion.

Amnesty International believes that the decision to detain Anar Mammadli for the duration of the investigation was taken at a court hearing which violated fair trial principles, and is a politically motivated punitive measure for his activism.

A statement issued by the Prosecutor General's Office on 18 December 2013 claimed that the investigation was initiated on the request of the Ministries of Taxation and Finance.

This statement was widely disseminated by national media outlets. On 20 December, an official from the Ministry of Taxation denied that the Ministry had initiated the investigation

into the activities of EMDS and Anar Mammadli,¹ contradicting the public statement issued by the Prosecutor General's Office.

Furthermore, a smear campaign against Anar Mammadli in pro-government and state-run media began weeks before and continued after the 9 October election. In one article, dated 12 September 2013, a pro-government MP launched an ominous attack on Anar Mammadli accusing him of working on behalf of the "Armenian lobby", and suggesting that an investigation was "probably underway" into the transfer of grants into his personal account.²

The charges against all three have their origins in a longer history of attacks against EMDS. Previously, EMDS had existed as the Election Monitoring Centre (EMC), which was founded in 2001 and re-established as EMDS after its registration was revoked by Khatai District Court in May 2008. In turn, EMDS was refused registration several times. It has challenged the final refusal decision of 4 March 2010, which is currently pending at the European Court of Human Rights. Over the past few years, the European Court of Human Rights has issued several decisions finding the Azerbaijani authorities responsible for violating the right to freedom of association by arbitrarily denying or delaying the registration of NGOs.³

The vitriolic smear campaigns, regularly documented physical attacks on its members⁴ and the lack of respect for fair trial standards in the pursuit of Anar Mammadli by the Azerbaijani authorities, leads Amnesty International to believe that the denial of EMDS' registration is an arbitrary violation of the rights of its members to freedom of association.

Consequently, Anar Mammadli and his peers have been left with no choice but to use partnerships with registered NGOs to obtain grants funding their legitimate activities and to exercise their rights to freedom of expression and association, resulting in the technical irregularities that the authorities are using to persecute the three men. Amnesty International considers the additional charges of influencing the elections to be entirely unevidenced and ill-founded.

Amnesty International considers Anar Mammadli to be a prisoner of conscience on account of the legitimate exercise of his rights to freedom of expression and association, and calls for his immediate and unconditional release, and for the charges of tax evasion, "abuse of authority" and "illegal enterprise" against him, Bashir Suleymanli and Elnur Mammadov to be dropped.

Background:

The Azerbaijani authorities have taken several steps to restrict freedom of association in the past few years. Recent examples include the introduction of a AZN 4,000 (\$5,100) fine for the provision of "false" information in applications for registration of NGOs, adopted by the Milli Majlis parliament in January 2012.

¹ Azadliq Radio, "No tax investigation has been initiated in relation to Anar Mammadli", 20 December 2013, <http://www.azadliq.org/content/article/25206170.html> (accessed 20 December 2013)

² Ceyhun Osmanli, *Grants from Europe are being transferred to personal accounts*, Azerbaijan Official State Newspaper, 12 September 2013, <http://www.azerbaijan-news.az/index.php?mod=3&id=28547> (accessed 19 December 2013)

³ Comments on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, Council of Europe Venice Commission, Opinion no. 636/2011, 27 September 2011, para 39, p 8, at [http://www.venice.coe.int/webforms/documents/?pdf=CDL\(2011\)090-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL(2011)090-e)

⁴ See, Amnesty International, *Downward Spiral: Continuing crackdown on freedoms in Azerbaijan*, AI Index: EUR 55/010/2013, p 20

Also see: Amnesty International, *The Spring that never blossomed: Freedoms suppressed in Azerbaijan*, AI Index: EUR 55/011/2011 : p34-35

On 11 March 2013, the President approved amendments to the Law on Non-governmental Organizations, the Law on Grants, and the Administrative Code of Azerbaijan, which placed additional administrative requirements on NGOs receiving financial or material aid without concluding a formal grant agreement with donors, and increased penalties for failing to meet the new requirements.⁵ This measure particularly hurt unregistered NGOs, which are automatically barred from concluding such agreements. Thus, by denying them registration, the authorities also deny them a chance to fund their activities.

According to Azerbaijani NGOs and media reports, the 17 December amendments introduced additional fines for national and international NGOs and individual managers for failure to provide the authorities with information or for providing false information. The changes placed a 90 day limit for the validity of the registration certificate issued by the Ministry of Justice – which is a required legal document for the day to day administration and operation of an NGO. Furthermore, it granted courts the right to suspend the activities of national and international NGOs for a period of a year, in accordance with the Law on Non-governmental Organizations. It introduced fines of 1000-2000 AZN for officials and 2500-3000 AZN for individual members of NGOs for the failure to make legally required changes to registration documents. In addition, it introduced a permanent ban for foreign NGOs and their branches, if they fail to extend their state registration.

Arbitrary denials of registration and EMDS

Amnesty International has received reports from several unregistered NGOs of repeated rejection of their registration applications by the Ministry of Justice for manifestly insignificant transgressions which are not clearly defined in law. This problem has been particularly common for pro-democracy and human rights NGOs, such as the Human Rights Club (HRC) and EMDS, which were denied registration in January 2011 and May 2010 respectively. In both cases, missing copies of documents, such as passports and signatures were cited by the Ministry of Justice as justification for denial of registration rather than a delay subject to the provision of these documents.

Before its present form, EMDS had existed as the Election Monitoring Centre (EMC), which was founded in 2001 and was only able to acquire registration from February 2008 until May 2008, when the Khatai District Court revoked the organisation's registration after a challenge from the Ministry of Justice, citing the submission of incorrect information. In the aftermath of this order, EMC was re-established as EMDS, which attempted to register several times, before a final refusal on 4 March 2010 led to the organisation to challenge the decision.⁶ Their case is currently pending at the European Court of Human Rights.

⁵ The International Center for Not-for-Profit Law, Azerbaijan, 27 July 2013, at <http://www.icnl.org/research/monitor/azerbaijan.html> (accessed 16 December 2013)

⁶ *The History of EMDS*, Official Website of the Election Monitoring and Democracy Studies Centre, <http://smdt.az/index.php/az/features-template-compatibility/smdt-nin-tarixi> (accessed 19 December 2013)