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The follow-up to the issue of political prisoners in Azerbaijan

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

The issue of political prisoners is still not resolved in Azerbaijan, despite the continuous efforts of the Parliamentary Assembly. In addition to several unresolved cases dating back to the accession of Azerbaijan to the Council of Europe, a number of new cases of political prisoners have arisen including politicians and activists linked to the opposition, as well as journalists, bloggers and peaceful protesters sentenced to heavy prison terms.

In several cases, humanitarian grounds, including the age of some prisoners and their deteriorating state of health, require their immediate release from prison, independently of any other criteria.

In a number of such cases, the European Court of Human Rights has already found violations of the European Convention on Human Rights. The cases of other alleged political prisoners are still pending before this jurisdiction, whilst yet other prisoners were induced to refrain from applying to the Court in good time by promises of an amnesty which then did not materialise.

The Azerbaijani authorities are invited to speedily resolve the cases of those persons included on the consolidated list of presumed political prisoners who are still in prison, without demanding admissions of guilt or public repentance as preconditions for release, and to take appropriate measures in order to ensure that there are no new cases of presumed political prisoners, in particular by refraining from arresting and prosecuting participants in peaceful demonstrations, by refraining from criminalising the expression of political and religious views in the media, by eliminating torture and other forms of ill-treatment of suspects in police custody and pre-trial detention, by allowing all suspects to be assisted by a freely chosen lawyer and by ensuring that all searches and seizures are performed in the presence of truly independent witnesses.

1. Reference to committee: Doc. 11468, Reference 3518 of 26 January 2009.

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls that the definition of “political prisoner” was elaborated within the Council of Europe in 2001 by the independent experts of the Secretary General, mandated to assess cases of alleged political prisoners in Armenia and Azerbaijan in the context of the accession of the two countries to the Organisation.

2. It notes with satisfaction that the general criteria put forward by the independent experts were approved by all stakeholders at the time, including the Council of Europe's Committee of Ministers, the Parliamentary Assembly and the Armenian and Azerbaijani authorities. The Assembly reaffirms its support for these criteria.

3. The Assembly notes that the issue of political prisoners is still not resolved in Azerbaijan, despite the continuous efforts of the Assembly, which adopted Resolutions 1359 (2004) and 1457 (2005) and Recommendation 1711 (2005) specifically on this topic. It fully subscribes to the conclusions and recommendations of the Council of Europe Commissioner for Human Rights following his visits to Azerbaijan in March 2010 and September 2011.

4. The same is true for a number of persons on the second list of 107 so-called “forgotten” political prisoners whose fate came to light only after the final report of the independent experts.

5. In addition, a number of new cases have arisen since the completion of the independent experts' work concerning politicians and activists linked to the opposition, as well as journalists, bloggers and peaceful protesters sentenced to heavy prison terms.

6. In a number of cases, the prisoners have already spent such a long time in detention that they ought to be released as a matter of non-discrimination vis-à-vis other prisoners convicted of similar crimes, even if the verdicts against them, following controversial trials, were deemed to be justified.

7. In several cases, humanitarian grounds, including the age of some prisoners and their deteriorating state of health, require their immediate release from prison, independently of any other criteria.

8. The Assembly is aware of the fact that any prisoner considering that his or her case fulfils the criteria of the definition of political prisoner can in principle lodge an application with the European Court of Human Rights.

9. The Assembly notes that, in a number of such cases, the European Court of Human Rights has already found violations of the European Convention on Human Rights (ETS No. 5). The cases of other alleged political prisoners are still pending before this jurisdiction, whilst yet other prisoners were induced to refrain from applying to the Court in good time by promises of an amnesty which then did not materialise.

10. The Assembly recognises that it is not competent to decide on the merits of individual cases of alleged human rights violations. But it considers that it is duty-bound to investigate allegations of systemic problems in the field of human rights protection in all member States and to analyse and evaluate, from a legal and political point of view, any cases or groups of cases which may shed light on patterns of human rights violations that need to be addressed by appropriate legal and political action.

11. The Assembly notes that several persons on the consolidated list of presumed political prisoners or on earlier versions of such lists have been set free on different grounds, such as presidential pardons, for health reasons or simply following the expiration of their prison terms.

12. In view of the above considerations, the Assembly invites the Azerbaijani authorities to:

12.1. speedily resolve the cases of those persons included on the consolidated list who are still in prison, without demanding admissions of guilt or public repentance as preconditions, by:

12.1.1. immediately releasing presumed political prisoners who have already served several years of their sentence, in application of the provisions of the Criminal Code relating to conditional release;

12.1.2. releasing or retrying presumed political prisoners who were convicted in breach of fair trial principles;

12.1.3. releasing on humanitarian grounds all presumed political prisoners who are seriously ill;

2. Draft resolution adopted by the committee on 26 June 2012.

12.1.4. releasing or retrying presumed political prisoners who were involved in certain political events only to a minor and very secondary degree, as the persons presumed to have instigated the events have themselves already been pardoned;

12.1.5. releasing presumed political prisoners who have no connection with the events in question other than that they are relatives, friends, or mere acquaintances of leading members of former governments;

12.2. take appropriate measures in order to ensure that no new cases of political prisoners, deemed as such by application of the criteria referred to above, are created, in particular by:

12.2.1. refraining from arresting and prosecuting participants in peaceful demonstrations;

12.2.2. refraining from criminalising the expression of political and religious views in the media, including through the Internet; however, hate speech and inciting violence shall remain subject to prosecution in accordance with the case law of the European Court of Human Rights;

12.2.3. eliminating torture and other forms of ill-treatment of suspects in police custody and pre-trial detention;

12.2.4. allowing all suspects to be assisted by a freely chosen lawyer;

12.2.5. ensuring that all searches and seizures are performed in the presence of truly independent witnesses.

B. Explanatory memorandum by Mr Strässer, rapporteur

1. Introduction

1.1. Procedure to date and geographical scope of the report

1. This report was originally intended to cover two mandates for which I was appointed as rapporteur on 24 March and 16 December 2009 respectively, on

– "The follow-up to the issue of political prisoners in Azerbaijan";

– "The definition of political prisoner".

2. The two rapporteur mandates had been merged by decision of the Committee on Legal Affairs and Human Rights at its meeting on 24 June 2010. At the same meeting, on the basis of an introductory memorandum I had submitted[3] and a hearing with experts, the committee endorsed the proposed criteria for the definition of political prisoners and authorised me to carry out a fact-finding visit to Baku. At its meeting on 5 October 2011, the committee renamed the joint report "Revisiting the issue of political prisoners" on the proposal of the Chairperson, as a compromise with the Azerbaijani delegation which objected to its country being singled out in the title of the report and refused to allow me to carry out my fact-finding visit.

3. At the meeting on 8 March 2011, an attempt by the Azerbaijani delegation to go back on the decision of 24 June 2010 and split up the double mandate into its two original components was rejected by the committee. Several attempts to obtain the Azerbaijani authorities' co-operation in organising my fact-finding visit failed. In August 2011, my visa application was officially rejected.[4] Two more attempts to organise a visit in November 2011 and at the end of January 2012 were also unsuccessful, despite several interventions from the committee Chairpersons, Mr Pourgourides and then Mr Chope. Following a last deadline for an invitation until 12 March 2012, set by the Chairperson at the January 2012 meeting, the committee was informed at its meeting on 12 March 2012 that a date for a visit had been set for the first week of May 2012. Unfortunately, one week before the agreed visit, during the April 2012 part-session, the Azerbaijani delegation set a new condition for granting my visa, namely that I should agree to discuss only the theoretical definition of political prisoners and not the alleged Azerbaijani cases. I felt duty-bound to insist on carrying out my fact-finding visit on the basis of the double mandate entrusted to me. Consequently, I was not granted a visa and the visit already arranged for the following week had to be called off. The committee, at its meeting on 24 April 2012, authorised me to present my report without the usual fact-finding visit.

4. At its meeting on 21 May 2012, the committee decided to split up my double mandate after all and asked me to present two separate reports, one on the definition of political prisoners[5] and the other on the alleged cases. As the Secretary General of the Parliamentary Assembly explained at the same meeting, this decision restores the situation that existed before the merger of the two motions on 24 June 2010. Consequently, the title change of October 2011 no longer applies.

5. As regards geographical scope, the first motion underlying this report was explicitly limited to Azerbaijan. The second, concerning the definition of political prisoners, was not limited to any country in particular. The merger of the two motions in June 2010 did not lead to any change with respect to geographical scope. The renaming, in October 2011, of the future report ("Revisiting the issue of political prisoners") allowed me to expand the potential geographical scope of my mandate within the limits provided by the then Chairperson of the Committee on Legal Affairs and Human Rights, who had proposed the new title. But in view of the reversal, on 21 May 2012, of the decision to merge the two reports, the title change and accompanying potential broadening of geographical scope have become inapplicable.

6. By way of introduction, I will give an overview of the long and painful history of the problem of political prisoners in Armenia and Azerbaijan (section 1.2 below) and recall my views, endorsed by the Committee on Legal Affairs and Human Rights at its meeting on 24 June 2010, regarding the distribution of roles between the Assembly and the European Court of Human Rights ("the Court") (section 1.3 below). In the first main part of this report (section 2 below), I will recall the existing, well-recognised definition of political prisoners, applicable in principle to all member States of the Council of Europe, as reaffirmed by the Committee on Legal

3. AS/Jur (2010) 28 dated 17 June 2010.
4. See "Azerbaijan won't give visa to PACE rapporteur, RFE, 18 August 2011: www.rferl.org/content/azerbaijan_will_not_give_visa_to_pace_rapporteur/24300593.html.
5. See Doc. 13011 and Resolution 1900 (2012).

Affairs and Human Rights at its meeting on 24 June 2010. The second main part (section 3 below) will consist in the application of these criteria to a number of cases and groups of cases of alleged political prisoners in Azerbaijan.

1.2. The historical context of the issue of political prisoners in the Council of Europe: the accession of Armenia and Azerbaijan

7. The issue of political prisoners in the Council of Europe dates back to the negotiations on the accession of Azerbaijan to the Organisation. Azerbaijan undertook, *inter alia*, "to release or to grant a new trial to those prisoners who are regarded as 'political prisoners' by human rights protection organisations".[6] In November 2000, the Committee of Ministers adopted Resolutions Res(2000)13 and Res(2000)14 inviting simultaneously Armenia and Azerbaijan to become member States of the Council of Europe, to be confirmed when the date of the accession was fixed. In order to help member States overcome their reluctance, at the time, to accept the accession of these two countries, a compromise solution was found within the Committee of Ministers, whereby it was also decided, in November 2000, that the Committee of Ministers would monitor, on a regular basis, democratic developments in both countries. Armenia and Azerbaijan joined the Council of Europe on 25 January 2001. The Committee of Ministers subsequently approved, on 31 January 2001, the Secretary General's initiative to appoint three distinguished "independent experts"[7] who would examine lists of cases of alleged political prisoners drawn up by Armenian and Azerbaijani human rights non-governmental organisations (NGOs).[8] Before so doing, the independent experts, acting in a quasi-judicial capacity, undertook the task of determining who could "be defined as a political prisoner on the basis of objective criteria in the light of the case-law of the European Court of Human Rights and Council of Europe standards".[9] They then examined 716 cases listed with a view to determining whether or not the detainees in question were indeed "political" prisoners, on the basis of a set of pre-established criteria to which all relevant Council of Europe bodies, including the Azerbaijani authorities, agreed.[10] The Committee of Ministers also set up a special group headed by then Italian Ambassador Ago (the so-called "Ago Group") to monitor the implementation of this commitment. Unfortunately, not all 716 cases were solved in due time. Twenty-three cases on the original list of 716 were given priority and dealt with by the experts as so-called "pilot cases". By April 2003, many of the 716 cases were resolved and the list was reduced to 212 cases, which were the subject of the experts' second mandate. In July 2004, the experts submitted their final report to the Secretary General. In addition to the 20 opinions on the pilot cases, they adopted 104 opinions concerning the 212 cases referred to them. They concluded that 62 persons were political prisoners, whereas 62 were not, or no longer.

8. An additional list of 88 cases of presumed political prisoners was subsequently drawn up by NGOs. It contains the names either of persons arrested or convicted before 1 January 2001 who were mistakenly omitted from the initial list of 716 presumed political prisoners or of persons arrested or convicted between 1 January 2001 and 14 April 2002, the date of the entry into force of the European Convention on Human Rights (ETS No. 5, "the Convention") in Azerbaijan. Only the Parliamentary Assembly has conducted an assessment of this list, which is appended to its report of January 2004 (Doc. 10026). In its Resolution 1359 (2004) on political prisoners in Azerbaijan, the Assembly called, to no avail, on the then Secretary General, Mr Walter Schwimmer, to continue the work of the independent experts by giving them a third mandate relating to this additional list. Another list of 107 new cases was presented by the Assembly in its report on "Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan"[11] leading to the adoption of Resolution 1457 (2005) and Recommendation 1711 (2005).

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6. Paragraph 14.4.*b* of Assembly Opinion 222 (2000).
7. Messrs Stefan Trechsel, former President of the European Commission of Human Rights and Judge on the International Criminal Tribunal for the former Yugoslavia (ICTY), Evert Alkema, former member of the Dutch Council of State and of the European Commission of Human Rights, and Alexander Arabadjiev, formerly a judge on the Bulgarian Constitutional Court and presently a member of the Court of Justice of the European Union.
8. For more details, see the document issued by the Secretary General of the Council of Europe, SG/Inf(2001)34 and Addenda thereto. The small number of cases concerning Armenia was rapidly resolved at the time.
9. See Committee of Ministers decision of 31 January 2001 (see document SG/Inf(2001)34, Addendum I, p. 93).
10. See document SG/Inf(2004)21.
11. Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan, Doc. 10564 (Rapporteur: Malcolm Bruce, United Kingdom, ALDE).

9. Since 2001, when Azerbaijan joined the Council of Europe, the Parliamentary Assembly has thus considered the issue of political prisoners in Azerbaijan on four occasions: January 2002, June 2003, January 2004 and June 2005[12]. In its last resolution on this matter, Resolution 1457 (2005), the Assembly

> *"resolutely reaffirms its position of principle that detainees recognised as political prisoners must be released. It calls on the Azerbaijani authorities to find a speedy and permanent solution to the issue of political prisoners and presumed political prisoners:*
>
> *i. by releasing the three remaining political prisoners as determined by the independent experts or by opening the possibility for their cases to be effectively considered by the European Court of Human Rights by a retrial or an appeal, as proposed by the Azerbaijani authorities;*
>
> *ii. by immediately releasing presumed political prisoners who have already served several years of their sentence, in application of the provisions of the Criminal Code relating to conditional release;*
>
> *iii. by releasing or retrying presumed political prisoners whose convictions were in breach of fair trial principles;*
>
> *iv. by releasing on humanitarian grounds presumed political prisoners who are seriously ill;*
>
> *v. by releasing or retrying presumed political prisoners who were involved in certain political events only to a minor and very secondary degree, as the people presumed to have instigated the events have themselves already been pardoned;*
>
> *vi. by releasing presumed political prisoners who have no connection with the events in question other than that they are relatives, friends or mere acquaintances of leading members of former governments;*
>
> *and it welcomes the undertaking by the Azerbaijani authorities to 'make use of every legal remedy (amnesty, review of cases by higher-instance courts, conditional release, release for health reasons, pardon) to settle this problem'".*

10. Despite some progress made following the various resolutions of the Assembly,[13] the problem is still not resolved, as recalled by the movers of one of the motions underlying this report:[14]

> *"Regrettably, no follow-up has been given to the Assembly recommendations, no results have been achieved and the work of the Task Force has been much less active since the adoption of Resolution 1545 (2007). Only two meetings have been held and no pardon decree has been issued since March 2007 despite promises to the contrary.*
>
> *At the same time the list of alleged political prisoners keeps growing. Some of the journalists who were condemned for defamation were found to be prisoners of conscience by Amnesty International. Altogether, today the list of Azerbaijani Federation of Human Rights Organizations includes 72 political prisoners, 9 probable political prisoners and 10 'former political prisoners'. Some of them were arrested for a second time. One former political prisoner, Ms Faina Kungurova, died in prison (18 November 2007) in unclear circumstances."*

11. The Assembly, in June 2010, debated a report on the functioning of democratic Institutions in Azerbaijan, which, in its chapter on human rights and fundamental freedoms, points out a number of cases of jailed journalists and activists that need to be resolved as a matter of urgency.[15] Following a visit of the co-rapporteurs to Azerbaijan from 31 January to 2 February 2012, the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) discussed an information note by the co-rapporteurs dated 25 April 2012, which once again refers to cases of imprisoned opposition activists and journalists, as well as to the need for the Committee on Legal Affairs and Human Rights to clarify the notion of political prisoners.[16]

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12. See: Resolution 1272 (2002) and Doc. 9310; Doc. 9826; Resolution 1359 (2004) and Doc. 10026; Resolution 1457 (2005), Recommendation 1711 (2005) and Doc. 10564.
13. See, for example, the press release of the rapporteurs on Azerbaijan of 5 January 2010 on the Presidential pardon decree on the occasion of the New Year 2010: http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=5163.
14. See motion for a resolution on the follow-up on the issue of political prisoners in Azerbaijan, Doc. 11468.
15. See Doc. 12270 of 31 May 2010 (Co-rapporteurs: Andreas Herkel (Estonia, EPP/CD) and Joseph Debono Grech (Malta, SOC), in particular paragraphs 54-83, and Resolution 1750 (2010), paragraphs 13-16.
16. See AS/Mon (2012) 05 rev. (in particular, paragraphs 41-43 and 52-56).

12. The then Council of Europe Commissioner for Human Rights, Thomas Hammarberg, published reports in March 2010 and in September 2011 in which he denounced the practice of using fabricated charges to arrest and silence parliamentary candidates, journalists, and members of youth groups.[17] The Commissioner's conclusions and recommendations[18] sum up the problems in a way which I can fully subscribe to in light of my own findings.

13. On 17 December 2009, the European Parliament voiced its own concern about "the deterioration of media freedom in Azerbaijan, [deploring] the practice of arresting, prosecuting and convicting opposition journalists on various criminal charges", and called on the Azerbaijani authorities to "release the imprisoned journalists immediately". On 24 May 2012, the European Parliament adopted another resolution[19] strongly criticising Azerbaijan for recent arrests of journalists and activists and demanding that those held on "politically-motivated charges" be released.

14. Among the recent cases that in my view need to be addressed most urgently is that of several young internet journalists ("bloggers") and youth activists who were convicted to long prison terms on "hooliganism" charges after they were themselves the subject of an unprovoked attack by security forces.[20] In November 2011, Amnesty International launched an urgent appeal to release 17 "prisoners of conscience".[21] These recent cases show that the structural problem in Azerbaijan involving the use of imprisonment to silence opposition voices still persists.

15. Many of the so-called "old cases" have become urgent humanitarian issues in view of the length of time the persons concerned have already spent in prison, or their age and precarious state of health. It is blatantly unjust to keep in prison people who at the time of the alleged crimes were very young and could at most be considered lowly accessories, whilst the instigators and organisers of their deeds were recognised as political prisoners and have long been released. It is equally unjust to keep in prison people who were arrested after the completion of the independent experts' mandate and who could only for this reason not be covered by their work. They are still being punished for participating in the crimes whose instigators and organisers, again, were recognised as political prisoners and released a long time ago.

1.3. Distribution of roles between the European Court of Human Rights and the Parliamentary Assembly

16. The criteria for identifying "political prisoners" frequently refer to the European Convention on Human Rights. A political prisoner is a person who is detained in violation of the Convention (notably its Articles 5, 6 and 10). It goes without saying that the authoritative interpretation of the Convention is the prerogative of the European Court of Human Rights. Since the entry into force of the Convention in Azerbaijan, the Court is also competent to hear individual applications from people who feel that their Convention rights had been violated. I should like to recall in this context that on 22 April 2010 the Court held that Mr Eynulla Fatullayev, who was jailed in April 2007 after writing a series of articles critical of the authorities, had been wrongfully imprisoned and called for his immediate release.[22] But the fact that a number of cases of alleged political prisoners are either still pending before the national courts, or before the European Court of Human Rights, does not in principle prevent the Assembly from making a political assessment of a possible systemic problem consisting in the frequent jailing of political opponents and independent journalists, either because relevant legal provisions are still not in line with Council of Europe standards, or because they are applied in a way that is inconsistent with these standards. In accordance with the Assembly's well-established practice,[23] its rapporteurs are free to refer to individual cases in order to detect and illustrate patterns of potential violations,

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17. See "Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 1 to 5 March 2010" (https://wcd.coe.int/ViewDoc.jsp?id=1642017) and "Observations on the human rights situation in Azerbaijan – Freedom of expression, freedom of association, freedom of peaceful assembly" (https://wcd.coe.int/ViewDoc.jsp?id=1839497).
18. See Report by Thomas Hammarberg, ibid., paragraphs 76-93.
19. www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/provisoire/2012/05-24/0228/P7_TA-PROV%282012%290228_EN.pdf (see in particular paragraph 6).
20. See press release of "Article 19" of 12 November 2009 (www.article19.org); and press release by the rapporteur of 12 November 2009 (http://assembly.coe.int/ASP/Press/StopPressView.asp?ID=2261).
21. See "The spring that never blossomed, freedoms suppressed in Azerbaijan": www.amnesty.org/en/library/asset/EUR55/011/2011/en/831dedec-1c7a-47a3-99ec-f59d1c2f3a19/eur550112011en.pdf.
22. See *Fatullayev v. Azerbaijan*, Application No. 40984/07, judgment of 22 April 2010.
23. See, for example, the reports on the situation of political prisoners in Azerbaijan cited in section 2 above, and those by Sabine Leutheusser-Schnarrenberger on the circumstances surrounding the arrest and prosecution of leading Yukos executives (Report + Addendum) (Doc. 10368, 29 November 2004), the investigation of crimes allegedly committed by high officials during the Kuchma rule in Ukraine – the Gongadze case as an emblematic example (Doc. 11686, 11 July

and to comment on such cases with a view to proposing possible solutions. Of course, the Assembly's political, albeit Convention-based, assessment of such cases is not intended to interfere in any way with the Court's independence, which the Assembly has always upheld and defended. Given that the Court is currently flooded by a high number of similar individual applications from certain countries triggered by "systemic" problems, the Assembly can make a useful contribution by addressing such issues, on the basis of carefully researched examples, and proposing solutions to the competent national authorities that may help stem the flood of applications to the Court at the source.

2. "Political prisoner" as defined by the Council of Europe's independent experts

17. Judge Stefan Trechsel presented his and his colleagues' findings regarding the definition and criteria for the term "political prisoner" at a hearing before the Committee on Legal Affairs and Human Rights on 24 June 2010 in Strasbourg.[24] The independent experts based their work on that carried out by Professor Carl Aage Nørgaard, then President of the European Commission of Human Rights, who had been invited by the United Nations Security Council to identify "political" prisoners in Namibia in 1989/90. Professor Nørgaard's close collaborator, Andrew Grotrian, was also among the experts testifying at the hearing on 24 June. The third expert at the hearing was Mr Javier Gómez Bermúdez, Judge, President of the Criminal Chamber of the Audiencia Nacional (Spain). Following the discussion with the experts, the committee approved the conclusions of my introductory memorandum[25] and invited me to continue working on the basis of these objective criteria.

18. During the discussion, agreement was reached among the experts that persons convicted of violent crimes such as acts of terrorism cannot claim to be "political prisoners" even if they purport that they have acted for "political" motives. Mr Gómez Bermúdez specified that this principle is applicable in democratic States with legitimate governments, where there could not be any talk of "legitimate resistance" such as that of the French "Résistance" during the Second World War. This argument is reinforced by Article 17 of the European Convention on Human Rights, entitled "Prohibition of abuse of rights".[26]

19. In short,[27] the following framework was developed by the independent experts, based on the European Convention on Human Rights and on the case law of the European Court of Human Rights; it differs according to the nature of the offence for which the person in question is imprisoned.

2.1. Purely political offences

20. These are offences which only affect the political organisation of the State, including "defamation" of its authorities or similar misdeeds.

21. Not all offenders who are imprisoned for such offences are "political prisoners". The test is whether the detention would be regarded as lawful under the European Convention on Human Rights as interpreted by the European Court of Human Rights. As a rule, "political" speech, even very critical of the State and the powers in place, is protected by Article 10 – there is no "pressing social need" in a "democratic society", in the terms of Article 10, to suppress such speech.[28] But there are cases in which political speech exceeds the limits set by the Convention, for example when it incites violence, racism, or xenophobia.[29] It should be noted that, whenever the Court has found the repression of such speech acceptable under the Convention, the penalties handed down by the national courts were largely symbolic. As the Convention must be interpreted coherently, without contradictions, a person punished in accordance with Article 10, paragraph 2, of the Convention

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2008), allegations of politically motivated abuses of the criminal justice system in Council of Europe member States (Doc. 11993 of 7 August 2009) and by Christos Pourgourides on fair trial issues in criminal cases concerning espionage or divulging state secrets (Doc. 11031, 25 September 2006) and member States' duty to co-operate with the European Court of Human Rights, (Doc. 11183, 9 February 2007), by Dick Marty on legal remedies for human rights violations in the North-Caucasus Region (Doc. 12276, 4 June 2010), by Erik Jurgens on repayment of the deposits of foreign exchange made in the offices of the Ljubljanska Banka not on the territory of Slovenia, 1977-1991 (Doc. 10135, 14 April 2004).

24. For a thorough presentation, see Stefan Trechsel, The notion of "political prisoner" as defined for the purpose of identifying Political Prisoners in Armenia and Azerbaijan, in: *Human Rights Law Journal*, Vol. 23, pp. 293-300 (December 2002). (French version in Vol.14, *Revue Universelle des Droits de l'Homme* (2002), pp.169-176.)

25. See document AS/Jur (2010) 28, especially paragraph 17.

26. The full text of Article 17 of the Convention stipulates: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

27. A more detailed presentation of the definition of political prisoners is provided in my separate report on this issue (Doc. 13011).

28. See the judgments of the European Court of Human Rights cited by Stefan Trechsel, op. cit., footnote 24.

cannot be seen as being held unlawfully under Article 5 and therefore cannot be considered a political prisoner. But it is understood that punishment for political speech that is in principle not protected by Article 10 can still be in violation of the Convention (and thus give rise to the prisoner in question being "political") when the punishment meted out is disproportionate, discriminatory or the result of an unfair trial.

2.2. Other political offences

22. These are offences where the perpetrator acts with a political motive (and not one of personal gain), and the offence not only damages the interests of the State, but also those of other individuals – for example acts of terrorism. Obviously, the State under whose jurisdiction such acts are committed is not only entitled, but is even under a positive obligation to prosecute such offences. Consequently, persons who are serving a sentence for such an offence or detained on remand on suspicion of having committed such an offence are not political prisoners. But the same exceptions as above can arise where the punishment meted out is disproportionate, discriminatory or the result of an unfair trial.

2.3. Non-political offences

23. Persons who are imprisoned in connection with non-political offences (that is all other offences where neither the *actus reus* nor the *mens rea* has a political connotation) are, as a rule, not political prisoners. Again, there are exceptions to this rule. A person convicted of a non-political offence can be a political prisoner when there is a political motive on the side of the authorities to imprison the person concerned. This can become apparent when the sentence is totally out of proportion with the offence and/or when the proceedings are clearly unfair.

2.4. Burden of proof

24. The distribution of the burden of proof is particularly important in such an area where much depends on the "political" or other motivation of either the perpetrator or the authorities. The agreed approach of the Council of Europe's independent experts was the following: it is in the first place for those alleging that a specific person is a political prisoner to present a *prima facie* case. This material is then submitted to the State concerned, which will in turn have the opportunity to present evidence refuting the allegation. As summed up by Stefan Trechsel:[30]

> *"unless the respondent State succeeds in establishing that the person concerned is detained in full conformity with ECHR requirements as interpreted by the European Court of Human Rights, as far as the merits are concerned, that the requirements of proportionality and non-discrimination have been respected and that the deprivation of liberty is the result of fair proceedings, the person concerned will have to be regarded as a political prisoner."*

25. Those mandated to establish the political character of a detention can also apply, *mutatis mutandis*, the Court's case law on factual inferences in cases in which the respondent State fails to co-operate by making available documents or other information that is in the exclusive possession of its authorities.[31]

2.5. Summary of the criteria[32]

26. "*A person deprived of his or her personal liberty is to be regarded as a 'political prisoner':*

a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;

b. if the detention has been imposed for purely political reasons without connection to any offence;

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29. See authority quoted by Stefan Trechsel, op. cit., footnote 24. More recently, the Court has found acceptable the conviction of far-right French politician Jean-Marie Le Pen for xenophobic speech (see inadmissibility decision of 7 May 2010 in the case of *Le Pen v. France* (Application No. 18788/09); but the Court also found the conviction of the authors of a particularly virulent, slanderous criticism of Mr Le Pen as acceptable under the Convention (see *Lindon, Otchakovsky, July v. France*, Applications Nos. 21279/02 and 36448/02, judgment of 22 October 2010 (Grand Chamber)).

30. Ibid., p. 299.

31. See, for example, the judgments of the European Court of Human Rights in the cases of *Orhan v. Turkey* of 81 June 2002 (Application No. 25656/94), paragraph 266, *Timurtaş v. Turkey* of 13 June 2000 (Application No. 23531/94), paragraphs 66 and 70, and *Khashiyev and Akayeva v. Russia* of 24 February 2005 (Applications Nos. 57942/00 and 57945/00), paragraph 137.

c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;

d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,

e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."

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27. The allegation that a person is a "political prisoner" must be supported by *prima facie* evidence; it is then for the detaining State to prove that the detention is in full conformity with requirements of the Convention as interpreted by the European Court of Human Rights in so far as the merits are concerned, that the requirements of proportionality and non-discrimination have been respected and that the deprivation of liberty is the result of fair proceedings.

28. A good look at the criteria shows that someone recognised as a "political" prisoner is not necessarily "innocent". The "political" aspect of a case may reside, for example, in the selective application of the law, or in disproportionately harsh punishment in comparison with persons without a "political" background convicted of a similar crime, or finally in unfair proceedings which may nevertheless have resulted in the conviction of a guilty person. Recognition of a prisoner as "political" does not therefore necessarily require his or her immediate release – a new, fair trial may well be the most appropriate remedy. This said, given the length of time many such prisoners have already spent in prison, their urgent release, even if they are actually "guilty" of the crimes they were accused of, is now often the sole means to dispel the suspicion that they are being treated particularly harshly for "political" reasons.

2.6. General acceptance of the independent experts' criteria

29. The criteria summed up above were provided to all concerned. As is stated in the Secretary General's information document on the results of the work of the independent experts, "[n]o substantial objections were raised to these criteria".[34] At its 765th meeting on 21 September 2001,[35] the Deputies "welcomed the Secretary General's independent experts' report on alleged political prisoners and Armenia and Azerbaijan as it appears in document [SG/Inf(2001)34 and Addendum I and Addendum II] ..." and adopted the following declaration on this matter:

> *"The Committee of Ministers of the Council of Europe welcomes the news that the President of the Republic of Azerbaijan has issued on 17 August 2001 a decree pardoning 89* ***political prisoners****, 66 of whom have been released and 23 of whom have had their sentences reduced ...." (bold added to underline that the term "political prisoner" was used by the Committee of Ministers itself)*

30. Three years later, at the close of the independent experts' second mandate, the Secretary General's information document reiterated that "[t]hese criteria were accepted by the Azerbaijani authorities and all Council of Europe instances".[36] The Parliamentary Assembly's subsequent resolutions were also based on the generally accepted criteria developed by the independent experts.[37]

31. During my present rapporteur mandate, several attempts were made at the committee level to reopen the question of the definition of political prisoners.[38] But I continue to hold the view that any such attempt at "reinventing the wheel" would merely deflect from the important task at hand of assisting Azerbaijan in resolving, at long last, its problem of political prisoners.

32. In this context, I would like to repeat that it is perfectly clear that terrorists, whether they belong to the ETA, to the PKK or any other terrorist organisation, do not fall under the definition of political prisoners, even if they claim that they have committed their heinous crimes for "political" motives. However, persons accused of

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32. SG/Inf(2001)34 of 24 October 2001, Cases of alleged political prisoners in Armenia and Azerbaijan, I. Information provided by the Secretary General, II. Report of the independent experts, Messrs Stefan Trechsel, Evert Alkema and Alexander Arabadjiev, paragraph 10.
33. By adopting Resolution 1900 (2012), the Assembly reaffirmed its support for these criteria.
34. See footnote 32 above. Report of the independent experts, paragraph 11.
35. Document CM/Del/Dec(2001)765bis, item 2.4 of 21 September 2001.
36. SG/Inf(2004)21 of 13 July 2004, paragraph 8.
37. See, for example, Resolution 1389 (2004), paragraph 3 in fine: "The Assembly considers that the objective criteria adopted to define 'political prisoners' in Armenia and Azerbaijan are valid"; Resolution 1457 (2005), paragraphs 4 and 11.
38. At the committee's meetings on 24 June 2010, 8 March 2011, 5 October 2011 and 26 January 2012.

terrorist crimes who were, for political motives – this time on the side of the authorities –, convicted on the basis of an unfair trial using tainted evidence (such as "confessions" obtained under torture, or witnesses acting under duress) may well be presumed "political" prisoners if there are sufficient indications that such violations have indeed taken place.

3. Application of the definition to a number of alleged cases of political prisoners

3.1. Methodology

33. During the fact-finding stage of the preparation of the present report, I had proposed to the Azerbaijani authorities to follow a six-step procedure:

– *Step one*: compiling a "draft consolidated list of alleged political prisoners" on the basis of lists of alleged political prisoners submitted by different NGOs

– *Step two*: transmitting the "draft consolidated list" to the Azerbaijani authorities for their comments.

– *Step three*: providing the authorities' comments to the NGOs which had transmitted the names of the persons in question, asking them to take a position on the authorities' comments.

– *Step four*: during the planned fact-finding visit to Baku, discuss the results of steps one to three with representatives of the authorities and of civil society.

– *Step five*: analysing the information received and assessing each case in light of the criteria confirmed by the Committee on Legal Affairs and Human Rights at its meeting in June 2010.

– *Step six*: presentation of the results in the form of a draft resolution and a report, for adoption first by the Committee on Legal Affairs and Human Rights and then by the Parliamentary Assembly.

34. Unfortunately, the authorities have failed to provide comments on the list which I transmitted in December 2011. The expert chosen by the authorities invited to the hearing in January 2012 also chose to discuss only general issues and failed to comment on the substance of the cases that I had raised. As I already mentioned,[39] the Azerbaijani authorities have also not allowed me to carry out the fact-finding visit to Baku, which would have been another opportunity for presenting me with the official point of view on the cases in question.

35. By contrast, I have received numerous comments, additional details, clarifications and other explanations concerning the different groups of cases from the non-governmental organisations which I consulted before and after the hearing in January 2012. In particular, on 10 and 11 May 2012, I had the opportunity to work with two Azerbaijani human rights defenders who came to Berlin and shared with me and my collaborators a wealth of information on selected cases. I should like to thank Mr Anar Mammadli and Mr Anar Gasimli for their professionalism and patience in standing up to the intensive questioning to which we submitted them during these two intensive working days.[40]

36. As far as the cases in question go back to the successive mandates of the Council of Europe's independent experts, I have relied to a large extent on the experts' case studies. I have not attempted to second-guess the conclusions of the eminent independent experts, whose work was supported by considerably greater resources than those at my disposal as a rapporteur of the Assembly. However, I received serious indications from NGO representatives who had previously worked with the independent experts that, in some cases, the determination as "not political" was merely based on the failure of the persons concerned to provide information allowing the experts to find that they had a "*prima facie* case".[41] This failure, according to the NGOs, may well have been caused by a lack of legal advice or support from NGOs, not all of whom worked with equal professionalism and objectivity. Some persons whose names appeared on the list may well have been under the mistaken impression that once they were on the list they would somehow be freed automatically. As the present exercise may well be the last chance for such persons to be released from prison, I decided to include these persons on the "draft consolidated list of alleged political prisoners" transmitted to the authorities and to civil society for their comments. If in such cases I did receive sufficient information allowing me to conclude that the persons concerned had a *prima facie* case for being considered

39. Paragraph 1 above.

40. I should also like to thank the international non-governmental organisations ARTICLE 19, Index on Censorship, Human Rights House Foundation and Human Rights Watch, with support from the Solidarity Platform, for funding Mr Mammadli's and Mr Gasimli's working visit at very short notice.

41. See section 2.4 above.

as “political” cases, whilst the authorities failed to provide corroboration to the contrary, I have included them on my final list. The cases concerned include, in particular, those of some (at the time) very young “OPON” (Ministry of Interior special forces) soldiers who followed their leaders' orders to participate in an aborted *coup d'état* in 1995. Whilst their senior officers, the organisers and instigators of the attempted coup, have long been released, after having been recognised as “political prisoners” by the Council of Europe, a number of rank-and-file soldiers, drivers, etc. are still in prison. As a matter of non-discrimination, they ought to be released too, unless they have been convicted in a fair trial of criminal acts committed on the occasion of the attempted coup for which their leaders could not be held responsible.

37. As explained above,[42] I am aware that this Assembly is not a court of law. Therefore I will not draw definitive conclusions on the cases of alleged political prisoners that were brought to my attention. But I have collected a wealth of information from many different sources. As the Azerbaijani authorities have not provided their views on the information I submitted to them,[43] I have applied, *mutatis mutandis*, the legal principle underlying the case law of the European Court of Human Rights on factual presumptions in cases in which the respondent State fails to provide a credible alternative version of the facts presented by the applicant.[44] In the light of this principle, careful consideration of all the information received has therefore led me to recognise a number of persons as “presumed”[45] political prisoners. Such persons should indeed be released or at least benefit from a new, fair trial, unless the authorities can refute point by point the specific information on which my assessment is based. Given that the Azerbaijani authorities failed to do so during the preparation of this report, they must now deal with this as part of the follow-up of this report in order to avoid being found definitively responsible for allowing cases of presumed political prisoners to remain unresolved in a member State of the Council of Europe. It will be for others to assess, at the appropriate time, what the consequences of such a situation should be.

38. The cases of presumed political prisoners will be presented in this report by groups of cases in order to place them more clearly in their political context. For reasons of space, only one or two particularly representative cases of each group can be presented in the report in any detail. For easier reference, an alphabetic list of all cases examined is attached as an appendix.[46] In the main report, I have included only cases of persons who at the time of writing were still in prison. But I have created a second appendix listing those persons who fulfilled the criteria for being recognised as “political prisoners” but who are no longer in prison, because their prison term had come to an end or because they were pardoned. The very existence of these cases further illustrates the systemic problems this report is intended to address. For the same reason, I have included some cases in a “watch list” of persons who are still in detention on remand and have not yet been convicted. In any event, my lists are not intended to be exhaustive – it is in fact quite likely that a number of cases have escaped my attention.

3.2. Cases of presumed political prisoners

39. I will split the presentation of the cases of presumed political prisoners into two main parts: the new cases which have arisen since the last report of the Assembly in 2005, and the older cases which date back to the time of the Council of Europe's independent experts, or are related to such cases.

3.2.1. New cases

40. I have separated the “new” cases of presumed political prisoners into five principal groups. The first includes cases of leaders or activists of the main secular opposition parties (in particular, “Musavat” and “Popular Front”). The second groups cases of civic activists (including those belonging to the “Public Chamber”/Ictimai Palata, which gathers several, but not all civil society and opposition groups). The third group includes journalists (including several on my “watch list” of persons in pre-trial detention). The fourth

42. Paragraph 16 above.
43. See paragraphs 33 and 34 above.
44. See the report by Christos Pourgourides (Cyprus, EPP/CD) on member States' duty to co-operate with the European Court of Human Rights, Doc. 11183, 9 February 2007, paragraphs 77-83 (with references to cases decided by the European Court of Human Rights).
45. The same terminology was used by my predecessor as rapporteur, Malcolm Bruce, in his last report on “Follow-up to Resolution 1359 (2004) on political prisoners in Azerbaijan” (Doc. 10564 of 31 May 2005), who was faced with the same issue.
46. Regarding the names of the persons mentioned, different spellings were used by the authorities and NGOs depending on whether transcriptions were made into English or German, and from the Russian or Azerbaijani languages. I have used the more widely used spellings (adding in brackets alternative spellings, to avoid any misunderstandings).

contains different sets of cases concerning Islamic activists, and the fifth and final group assembles other emblematic cases such as those of former ministers who had distanced themselves from the current authorities.

3.2.1.1. Cases of leaders and activists of secular opposition parties

41. This group of cases includes a number of young people arrested during the generally peaceful demonstration organised by "Public Chamber" on 2 April 2011, when the authorities feared the propagation of the "Arab Spring" to Azerbaijan. The main charge against them was the organisation of or participation in "unrest" during the demonstration.

Case No. 1: Abbasli (Abbasly), Tural

42. Mr Abbasli, chairperson of the youth organisation of the opposition party "Musavat", was a student at Baku University (master of journalism); when he was arrested, he was also dismissed from the University. He was arrested on 2 April 2011 at the very beginning of the "Public Chamber" rally when he was shouting slogans for freedom and the resignation of the government. According to his lawyers, two police officers beat him with a bludgeon and brought him to the police station of Yasamal district, where he was beaten again, by the head of the station. When his lawyer, Mr Gasimli, came to the police station, he saw traces of the beatings (around Mr Abbasli's eyes and on his legs) and asked a police investigator for permission to take photographs, a request that was denied. The investigator also refused to have photographs taken of himself. During the trial, Mr Abbasli told the judge about the beatings. The judge asked the prosecutor to carry out an investigation, in writing, which the prosecutor's office refused to do. According to the Prosecutor's Office, the traces of beatings, which had in the meantime been confirmed by an expert, had been caused by Mr Abbasli himself, when he had resisted arrest.

43. On 7 September 2011, Mr Abbasli was convicted of a crime under Article 233 of the Criminal Code (organising an action resulting in the disturbance of public order) and sentenced to two years and six months in prison.

44. The maximum sentence under Article 233 of the Criminal Code is three years in prison. The provision foresees alternatives to imprisonment, such as a fine, or corrective labour, or restriction of liberty of up to two years. A total of 14 people were arrested in connection with the rally on 2 April, four of them as "organisers" and 10 as "active participants". Three of the "organisers", Mr Abbasli, Mr Hajili (case No. 34), and Mr Majidli (case No. 64), were given harsh prison sentences; the fourth, Mr Fuad Gahramanli, was sentenced to house arrest only, although he was one of the official organisers of the protest. Human rights defenders consider this difference of treatment as "*divide et impera*" tactics to spread distrust among opposition activists, and to help spread rumours of collusion with the authorities.

45. By contrast, the conviction of Mr Abbasli as an "organiser" appears to be an obvious miscarriage of justice: at the time when the organising committee for the protest action met and decided on the rally on 2 April 2011, namely on 18 March, Mr Abbasli was actually in (administrative) detention. He had been arrested on 12 March 2011 following a rally of youth organisations on 11 March 2011 and was only released on 19 March.

46. The harsh sentences against the organisers and participants of the rally of 2 April were ostensibly justified by "violence" committed by certain participants. According to the lawyers and NGOs, who provided us with video footage of the events[47] that appears to confirm their account, the protest action was a peaceful use of the right to freedom of expression. Whilst some windows were broken towards the end of the event by people unknown to the organisers (and suspected of being "agents provocateurs"), certain police officers beat protesters, who merely raised their arms to protect themselves against the bludgeons. The testimony of some witnesses of the prosecution, owners of market stalls in the vicinity of the protest action who complained that access to their stalls was restricted to the point that some felt obliged to close their stalls temporarily, was "well rehearsed" according to the lawyers. In any event, none of the people convicted as organisers or active participants of this protest action were even accused, let alone convicted of having committed acts of violence themselves.

47. Available at www.youtube.com/watch?feature=player_embedded&v=HMOmAQXUku0.

47. Mr Abbasli was recognised by Amnesty International as a "prisoner of conscience". In my view, he is also a presumed political prisoner under the "Trechsel criteria". Organisers of and participants in events making use of their right to peaceful expression of their opinions should not be criminalised and certainly not receive such harsh prison sentences. The procedural irregularities and the illogical findings of fact further support the assessment of the case as presumably political.

Case No. 23: Eyvazli Zulfugar (Zulfuqar) / Eyvazov Zulfigar

48. Mr Eyvazli is chairperson of the Nizami district organisation of the Popular Front (AXCP/PPFA) opposition party. He was sentenced to one year and six months in prison as an "active participant" of the protest action on 2 April 2011 (see case No. 1 above).

Case No. 33: Hajili (Hajily), Arif

49. Mr Hajili is the head of the Musavat Party central apparatus; he was arrested during the "Public Chamber" rally on 2 April 2011 (see case No. 1 above) and sentenced to two years and six months in prison. Mr Hajili had previously been arrested at a protest meeting following the 2003 presidential election and sentenced to one year in prison.

50. On 10 January 2012, Mr Hajili won a case before the European Court of Human Rights.[48] The Court found a violation of Article 3 of Protocol No. 1 to the Convention (right to free elections). Whilst the case was not related to the cause of his imprisonment, it illustrates the political conflict between Mr Hajili and the Azerbaijani authorities.

51. Mr Hajili was recognised as a "prisoner of conscience" by Amnesty International. He is also a presumed political prisoner, in view of the political nature of the action in which he was involved, the disproportionate penalty and the context of his trial, together with other activists, against the backdrop of his previous conflict with the authorities on election rights.

Case No. 34: Hajibeyli, Rufet (Rufat)

52. Mr Hajibeyli was an active participant of opposition parties and movements; he was convicted as an "active participant" in the protest action of 2 April 2011 (see case No. 1 above); he was sentenced to one year and six months in prison.

Case No. 35: Hasanli, Shahin

53. Mr Hasanli, a head of department of the opposition Popular Front Party, was arrested before the protest action on 2 April 2011, when he was staying overnight at his mother's house outside Baku. He had fled from his own home because he had received warnings that he would be arrested. When the police entered his mother's house during the night, he did not resist arrest, but refused to sign the search protocol because of the absence of independent witnesses, as required by law. During the disputed search, the police found a bullet. Witnesses of the search were presented during the trial, but the defence stated that they were not present on the premises at the time of the search. On 21 July 2011, Mr Hasanli was found guilty of being an "active participant" in the protest action of 2 April 2011 (see case No. 1 above), of disobeying a police order, and of illegally keeping ammunition, and was sentenced to two years in prison.

54. He is a presumed political prisoner because of the political nature of the action for which he was convicted and the disproportionately harsh prison sentence (oddly, although he was in fact one of the official "organisers", he was not present at the protest on 2 April because he had been arrested earlier, and was convicted as an "active participant"). The conviction for possession of ammunition appears to be particularly suspect, given the circumstances – besides the alleged absence of witnesses, why would he have brought a bullet to his mother's house if he had reasons to fear imminent arrest?

Case No. 36: Hasanov, Babek

55. Mr Hasanov is an opposition party activist; he was convicted of being an "active participant" in the protest action on 2 April 2011 (see case No. 1 above) and sentenced to one year and six months in prison.

Case No. 57: Kerimov, Sahib

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48. *Hajili v. Azerbaijan*, Application No. 6984/06, judgment of 10 January 2012.

56. Mr Kerimov is an opposition party activist; he was convicted of being an "active participant" in the protest action on 2 April 2011 (see case No. 1 above) and sentenced to two years in prison.

Case No. 60: Majidli, Elnur

57. Mr Majidli is an opposition party activist; he was convicted of being an "active participant" in the protest action on 2 April 2011 (see case No. 1 above) and sentenced to one year and six months in prison.

Case No. 61: Majidli, Mahammad (Mohammad)

58. Mr Majidli is the Deputy Chairperson of the Popular Front opposition party (AXCP/PPFA); he was convicted of having been one of the organisers of the protest action on 2 April 2011 (see case No. 1 above) and sentenced to two years in prison.

Case No. 64: Mammadli (Mamedli), Ahad

59. Mr Mammadli is an active member of the Musavat opposition party; he was convicted as an "active participant" of the protest action on 2 April 2011 (see case No. 1 above) and for resisting government officials through force (Article 315 of the Criminal Code) and sentenced to three years in prison.

Case No. 80: Quliyev, Ulvi

60. Mr Quliyev is an opposition activist. He was convicted as an "active participant" of the protest action on 2 April 2011 (see case No. 1 above) and for resisting government officials through force (Article 315 of the Criminal Code) and sentenced to three years in prison.

3.2.1.2. Cases of civic activists

Case No. 43: Iskenderov (Isganderov), Vivadi

61. Mr Iskenderov was an independent parliamentary candidate in 2010. He is chairperson of the public association "Assistance to Democracy Protection" and a legal activist; he was convicted on 27 August 2011 for "pressure on voters" (Article 159.3 of the Criminal Code), "interference with members of an election commission" (Article 160.1), "assault and battery" (Article 132) and sentenced to three years in prison.

62. According to his lawyers, the following events took place at a polling station in the Agdash-Goychay district during the parliamentary elections in 2010: Mr Iskenderov, who, as a candidate, had the right to be present at the polling station, noted that "ballot stuffing" was taking place. He asked for the annulment of the results in this station, starting a discussion with members of the election commission in attendance. Unauthorised persons present in the polling station forcibly removed him from the premises, whilst Mr Iskenderov merely tried to passively protect his physical integrity and his right to be present at the polling station. The witnesses of the prosecution in the trial were relatives of the members of the election commission, whereas authorised observers present at the station did not confirm that Mr Iskenderov had beaten anyone. The allegation of ballot stuffing in this station was not investigated despite the evidence (in particular video footage) adduced by Mr Iskenderov.

63. The authorities were allegedly also upset with Mr Iskenderov for giving free legal advice to inhabitants of the Goychay-Kurdemir region.

64. Given the political connotations of the action for which he was convicted, his political and civic activism, and the harsh punishment meted out following a suspect trial in apparent retaliation for his insistence on exposing election fraud, I consider Mr Iskenderov a presumed political prisoner.

3.2.1.3. "Watch list": persons in pre-trial detention arrested in suspect circumstances but not yet convicted

65. Human Rights Watch (HRW) has asked me to flag the following two cases of civic activists arrested in suspect circumstances:

Case No. 54: Khasmammadov, Taleh

66. Mr Khasmammadov is a lawyer, human rights defender and blogger from the town of Goychay, who was arrested in November 2011 on charges of "hooliganism" and physically assaulting a public official. Mr Khasmammadov specialises in investigating allegations of abuses and illegal activities committed by law enforcement officials. I share HRW's worries that he may be a victim of retaliation by law enforcement officials angered by his investigations.

Case No. 62: Mamedov, Bakthiar

67. Mr Mamedov from Baku is also a lawyer who defended the rights of two families facing illegal evictions in the Bail district of Baku. According to Amnesty International, he was arrested on 30 December 2011 on apparently spurious extortion and fraud charges and is still in pre-trial detention.

Case No. 29: Gulaliyev, Ogtay

68. Human Rights House (HRH) and several other NGOs also asked me to urgently place this case on our "Watch list".

69. Mr Gulaliyev is a well-known human rights defender co-ordinating the "Kura" centre whose aim is to help victims of the April/May 2010 flood disaster to obtain promised State assistance. Having exposed serious mismanagement and corruption, he was arrested on 8 April 2012. His treatment in detention and the manner in which the investigation is conducted gives rise to serious worries.[49] On 13 June 2012, the Sabirabad district court ordered his release, but the criminal case against him continues, according to the information I received just before the adoption of this report.

Case No. 84: Seyidov, Elnur

70. A group of eminent members of the Coordination Council of the Public Chamber of Azerbaijan asked me to flag the following case of the brother-in-law of a leading opposition politician, Mr Ali Karimli, who has reportedly been the subject of pressure by the authorities over several years.

71. Mr Seyidov, who is not involved in politics and suffers from serious physical disabilities (multiple sclerosis), was arrested on 27 March 2012 on allegedly fabricated fraud charges. The purpose of the arrest, according to numerous observers, was to increase the pressure on Mr Ali Karimli. The case is being investigated by the Ministry of National Security, in breach of normal rules of criminal procedure.

3.2.1.4. Cases of imprisoned journalists

72. All but the first of the following cases were submitted to me by Human Rights Watch in April 2012. I have also discussed them in detail with the two lawyers from Baku who came to Berlin on 10 and 11 May 2012. Contrary to the other cases raised in this report, they were not included in the original lists of alleged cases of political prisoners submitted by the Azerbaijani NGOs that participated in the January 2012 hearing.

Case No. 21: Bayramov, Ramin

73. Mr Bayramov is the editor of the website "Islamazeri.az". He was arrested on 11 July 2011 and sentenced on 26 January 2012 to one year and six months in prison for possession of drugs and firearms. According to observers,[50] there are doubts about the real reasons for his arrest, which took place on the same day as those of the leaders of the Azerbaijani Islamic Party (AIP).[51] It was initially reported that the National Security Ministry suspected Mr Bayramov of having links with the Iranian Cultural Centre in Baku and belonging to the radical Shi'ite group "Jafari", but then he was charged with drugs and firearms possession.

74. According to a human rights activist who cannot be suspected of being particularly sympathetic to Islamic ideas, the accusations against Mr Bayramov look unconvincing. The drugs were found in the pocket of a traditionalist Muslim believer arrested in the street purportedly at random and a forensic examination revealed that he is not a drug addict.

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49. I received a detailed written information memorandum on this case from Human Rights House, which will allow me to keep this case under review also in the follow-up stage of this report.
50. See press release of Reporters without Borders of 9 March 2012: "Azerbaijan: online journalist sentenced to 18 months in prison" (http://en.rsf.org/azerbaijan-online-journalist-sentenced-to-18-09-03-2012,42047.html).
51. See paragraphs 88-104 below.

75. The website edited by Mr Bayramov is strongly critical of the government, from an Islamic viewpoint, and has opposed, for example, the ban on wearing the Islamic headscarf ("hijab") in schools.[52]

Case No. 49: Janiyev, Aydin

76. Mr Janiyev, a journalist of the *Khural* newspaper from Lankaran, was sentenced to three years in prison in November 2011 on "hooliganism" charges, apparently in retaliation for articles he had published.

3.2.1.5. "Watch list": persons in pre-trial detention arrested in suspect circumstances but not yet convicted

77. Human Rights Watch and other local human rights groups have asked me to flag the following cases of journalists who are still in pre-trial detention.

Case No. 20: Bayramli, Anar

78. Mr Baramli is a journalist for Iranian "Sahar" television. He was arrested on 17 February 2012 on apparently suspect drug possession charges. He voluntarily came to the local police station after officers had come to his home to inform him that the police chief wanted to speak with him. Upon arrival at the police station, he was asked to leave his jacket in one room, and then escorted to another room. The police chief never showed up and Mr Bayramli was not questioned, but escorted back to the first room, where police officers searched his clothes. According to Mr Bayramli's lawyer, police found 0.387 grams of heroin in a jacket pocket. Mr Bayramli's driver, Ramil Dadashov, was arrested separately, on the same day, also facing questionable drug possession charges.

79. Human Rights Watch pointed out to me that Azerbaijani law enforcement bodies frequently use bogus drug possession charges against government critics to silence them, citing the recent cases of Eynulla Fatullayev, Jabbar Savanli and Mirza Zakit. Just before this report was distributed, I was informed that Mr Bayramli had indeed been convicted of drug possession and sentenced to two years in prison by the Binaqadi district court.

Case No. 28: Gonagov, Vugar

Case No. 30: Guliyev, Zaur

80. Respectively executive director and editor-in-chief of Xayal television in Guba, Mr Gonagov and Mr Guliyev were detained on 13 March 2012 and are still in pre-trial detention. They face criminal charges of "organising and participating in social unrest and abuse of power". The charges appear to be linked to their posting on "YouTube" a speech by a high official in Guba, which many believe was the catalyst for mass protests in Guba on 1 March 2012.

81. Their treatment in detention gives rise to concern: they were unlawfully kept in a police cell until 6 April 2012, when they were transferred to the Kurdakhani pre-trial detention facility. Mr Guliyev was allowed no visits from his lawyer from 13 March until 6 April. Mr Gonagov was allowed two such visits, only to be told on the second visit that the lawyer refused to work for him, apparently under pressure. Until their transfer to Kurdakhani, they were also not allowed any visits from family members. Despite numerous requests, the two journalists' lawyers have not been granted access to their case files. Mr Guliyev also suffers from severe ulcers. Although he was examined by a doctor in pre-trial detention, the facility claims that they do not have medicines to treat him.

Case No. 89: Zeynalli, Avaz

82. Mr Zeynalli, editor of the *Khural* newspaper, was arrested in October 2008 and is still in pre-trial detention on questionable extortion charges, which according to HRW were apparently brought in retaliation for critical reporting by *Khural*. The charges against Mr Zeynalli were brought by a member of parliament belonging to the ruling party. Additional tax evasion charges were brought against Mr Zeynalli in March 2012. Furthermore, the newspaper's property was seized by court bailiffs in October 2011 after it failed to pay fines in defamation cases brought by the head of the presidential administration and the director of the Mass Media State Support Fund.

52. See paragraphs 124-138 below.

3.2.1.6. Cases of Islamist activists

83. This group of cases is particularly delicate, and the list is definitely incomplete. My interlocutors among the human rights defenders in Azerbaijan distinguish between three sub-groups, which number well over 200: firstly, members of illegal (underground) political organisations and armed groups, secondly, members of the unregistered, but openly active and non-violent "Islamic Party of Azerbaijan", and thirdly, individual believers and clerics linked to Said Dadashbeyli persecuted because of their religious activities.

84. As background, it should be recalled that the Azerbaijani Muslims are split into about 70% Shi'ites and 30% Sunnis. The Shi'ites are traditionally looking towards Iran and live mostly in the Southern provinces of Lankaran, Astara, Masally and Bilasuvar, but there are also sizeable Shi'ite communities in the regions of Baku and Sumqayit. The Sunnis live predominantly in the North, or in the region of Baku or elsewhere as refugees from occupied areas in the centre of the country. They have traditional ties with Daguestan and Chechnya, and some have participated in "djihadist" activities in the North Caucasus and Afghanistan following radical foreign influences such as Wahhabism (from Saudi Arabia).

85. According to my interlocutors from civil society, there is no evidence that the IPA and the group of Said Dadashbeyli have engaged in actual violence, although they appear to have chosen to work "underground" (the Dadashbeyli group never even attempted to register, and the IPA did not attempt to fight the refusal of registration by the Ministry of Justice in the courts). I was told that the objective of these groups is the establishment, albeit by peaceful means, of the Sha'aria, which would involve abolishing many of the rights protected by the European Convention on Human Rights.

86. For obvious reasons, I have not had the opportunity to meet with the imprisoned leaders of these groups in Azerbaijan. I have, however, consulted the IPA leadership by correspondence, through their lawyer, Mr Gasimli, with whom I also spoke about the following cases at length during our working session in Berlin on 10 and 11 May 2012. I asked "impolite" questions about the leaders' political objectives and the methods with which they intended to come to power. They gave all the "right" answers, refuting archaic Sha'aria rules and clearly condemning any violence. I must nevertheless admit that I still have difficulties assessing this particularly diverse group of cases. Remaining faithful to the agreed criteria for the definition of political prisoners, I have concentrated on the presence of a fair trial. It is perfectly legitimate, and expressly recognised in Article 17 of the European Convention on Human Rights that a State has the right to defend its constitutional order against groups that want to overthrow it in order to establish a new regime disregarding the rights and freedoms protected by the Convention. But a person, even convicted of a violent crime but by an obviously biased court, on the basis, for example, of a confession extracted by torture, may well be innocent and, if persecuted for political reasons, should be recognised as a political prisoner. I can only solemnly appeal to the Azerbaijani authorities, and in particular the judicial authorities, to refrain from using unfair and unlawful methods in their fight against Islamic extremism. Methods such as torture, trumped-up charges, manipulated witnesses, biased assessment of evidence, etc. only end up delegitimising the fight against extremist groups and in fact strengthening them by creating "martyrs". This is the position adopted by our Assembly in the light of recent reports such as those by Dick Marty and by Lord Tomlinson covering different aspects of the fight against terrorism whilst respecting human rights,[53] which I fully share.

87. In view of the above, I will concentrate on a small number of emblematic cases for which I have received sufficiently detailed information.[54]

3.2.1.7. Islamic Party of Azerbaijan activists

88. The chairperson, his deputy and other members of the IPA were arrested in 2011 for an attempted *coup d'état*. According to observers, the persecution of the members of this party started after a speech by the chairperson, which was also posted online,[55] sharply criticised the government and called on all Muslims to overthrow it. Allegedly, weapons were found in the residences of several party members or relatives, but major procedural violations occurred during the searches and seizures and the trial. I will present in some more detail the case of party chairperson Movsum Samedov, as I was able to question his lawyer during our

53. See Lord John Tomlinson (United Kingdom, SOC), Human rights and the fight against terrorism, Doc. 12712 dated 16 September 2011; Dick Marty (Switzerland, ALDE), Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations, Doc. 12714 dated 16 September 2011; Secret detentions and illegal transfers of detainees involving Council of Europe member States: second report, Doc. 11302 dated 16 November 2011; and first report, Doc. 10957 dated 12 June 2006.

54. In early June 2012, I received another list of alleged political prisoners belonging to different Muslim groups; I was unable to take it into account as there was no more time for thorough research.

55. www.youtube.com/watch?v=rXS8mMKhfZw (English translation available through the secretariat).

working session in Berlin on 10 and 11 May 2012. Most of the following cases, presented in alphabetic order, are linked to this case (with the exception of those of four other IPA activists, Mr Ganiyev (case No. 25) and Mr Ilyasov (case No. 40)).

Case No. 3: Abbasov, Faramiz (Faramaz)

89. Mr Abbasov was arrested in 2011 and sentenced to 11 years in prison for an attempted *coup d'état*.

Case No. 5: Abdullayev, Vagif

90. Deputy Chairperson of the Islamic Party, he was arrested in 2011 and sentenced to 11 years in prison for an attempted *coup d'état*.

Case No. 7: Ahundzade, Ruxulla (Akhundazadeh, Rufulla)

91. Chairperson of the Islamic Party's Astara regional organisation, he was arrested in 2011 and sentenced to 11 years and six months in prison for an attempted *coup d'état*.

Case No. 25: Ganiyev, Arif

92. A leading IPA activist, Mr Ganiyev was arrested on 11 July 2011 (at the same time as Islamic blogger Ramin Bayramov)[56] and convicted on spurious drug and weapons possession charges on 26 January 2011.[57]

Case No. 40: Ilyasov, Fahri

93. Sentenced to three years and six months for “hooliganism”. Mr Ilyasov is an Islamic theologian and a leading member of the IPA. He was arrested at a separate protest action against the “hijab” ban in the city of Ganja and was convicted solely on the basis of evidence provided by the police for breaking police equipment and “destroying work harmony” in the police station.

Case No. 63: Mamedrzayev, Firdovsi

94. A member of the Islamic Party, Mr Mamedrzayev was arrested in 2011, sentenced to 10 years for an attempted *coup d'état* and placed in “isolator” prison.

Case No. 82: Samedov, Dayanat

95. A relative of the Chairperson of the Islamic Party, he was arrested in 2011, accused of an attempted *coup d'état* and sentenced to 10 years in prison.

Case No. 83: Samedov, Movsum

96. Mr Samedov is Chairperson of the Islamic Party of Azerbaijan and a medical doctor by training. He was placed in administrative detention on 7 January 2011, in pre-trial detention on 20 January 2011, and sentenced on 7 October 2011 to 12 years in prison for an attempted *coup d'état* (“capture of power through violence”).

97. The main evidence for the conviction was a speech he had made. Mr Samedov had, *inter alia,* accused the current government of being corrupt and “friends with the Zionists”, and announced that “the Azerbaijani people must finish with this cruel regime”. The significance of this speech as an attempt to “capture power through violence” under the criminal code was assessed by a court-appointed expert, a physicist by training. A request by the defence for a counter-expert analysis was rejected by the court.

98. Mr Samedov was also convicted of preparation of terrorist acts against Jews living in the Guba region (so-called “mountain Jews,” who are considered particularly well integrated into Azerbaijani society). The prosecution did not provide any specifications with regard to the alleged plot. A Jewish parliamentarian from the region, Mr Jevda Abrahamov, publicly stated that his community has no quarrel with the Muslims in the region.

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56. See paragraph 72 above, case No. 21.
57. See Reporters without Borders, footnote 50 above.

99. The procedure followed in the pre-trial phase was dubious. Whilst Mr Samedov was arrested on 7 January 2011, his relatives were not informed of his whereabouts. They addressed themselves to a lawyer on 12 January, asking for help in their search. The lawyer wrote to all relevant authorities (Interior and Justice Ministries, prison administration) but did not get an answer for another week. In the following week, he had access to his client only once, at the Ministry of Interior, under police surveillance. Mr Samedov was only officially placed in pre-trial detention and accused of a criminal offence (attempted capture of power through violence, the *corpus delicti* being the above-mentioned speech) on 20 January 2011.

100. Weapons were found with his relatives: a Kalashnikov, three hand-grenades, and some ammunition in the "mini-market" belonging to Mr Samedov's nephew, and one week later another Kalashikov and more grenades were found in the home of a brother-in-law. In both cases, the search protocols were signed by people brought along by the police. They were described as "part-time policemen" by the lawyer, who indicated to me that he has evidence that the police use the same witnesses over and over again, some even at the same time in different places.

101. Another pattern of procedural abuse was described by the lawyer as follows: witnesses of the prosecution were "well prepared", but if they began to waver under the defence's questioning, the judge cut off the interrogation. For example, when a witness describing himself as a "religious man" was asked how often he prayed each day, he answered "17 times", following which the judge stopped the questioning.

102. The lawyers did not have any meaningful access to their clients during the trial, which went on all day, day after day, with no access being granted to the lawyers after the end of the hearings.

103. Given that Mr Samedov was accused (and convicted) of masterminding an alleged terrorist conspiracy and an attempted *coup d'état*, it is surprising that, despite the obvious possibilities of surveillance of people suspected of such actions, the prosecution did not even attempt to put forward any evidence, such as intercepted messages or conversations, in order to substantiate the accusations, which have apparently remained very unspecific.

104. In view of the political character of the action for which he was convicted (a public speech), the political role played by Mr Samedov, the parallel arrest and conviction of the entire party leadership, and the apparent procedural violations and inconsistencies of the prosecution's case, I consider Mr Samedov a presumed political prisoner under the agreed criteria.

3.2.1.8. "Said Dadashbeyli group"

105. The following cases are of members of a group of mostly young people arrested on 13 January 2007 for an alleged attempted *coup d'état*. The group is said to be pro-Islamic. Apparently, numerous violations of procedural rights occurred during the trials. The accused have reported severe pressure and torture, and some of them have lodged applications to the European Court of Human Rights. Local NGO observers who do not generally sympathise with the group's political objectives consider that there is little to no evidence of actual or planned violence by the group and that many of the charges (weapons or drugs "found") may have been trumped up.

106. The following cases belong to this group. I will provide more details of Mr Dadashbeyli's own personal case.

Case No. 6: Agayev, Farig (Farid) Nadir

107. Mr Agayev was sentenced to 13 years in prison; his case is pending before the European Court of Human Rights.[58]

Case No. 9: Aliyev, Ceyhun (Djeyhun/Jeyhun) Saleh

108. Mr Aliyev was sentenced to 14 years in prison.

Case No. 13: Aliyev, Rashad Ismail

109. Mr Aliyev was sentenced to 14 years in prison.

Case No. 22: Dadashbeyli, Said Alakbar

58. Application No. 38091/11.

110. Mr Dadashbeyli was born in 1975. He was arrested on 13 January 2007 and convicted on 10 December 2007 under eight different articles of the Criminal Code, including for attempting to seize power through violent means (Article 228.4), illegal detention of weapons and ammunition (Article 228.1), establishment of a terrorist group (Article 218.2), and use of counterfeit money (Article 204.3.1). He was sentenced to 14 years in prison.

111. He was found to be the leader of an Islamic terrorist conspiracy. Around 35 alleged conspirators were arrested at first and placed in confinement cells at the Ministry of National Security, incommunicado for two days. Eleven of them were indicted, of whom 10 were convicted and one died in detention. According to my interlocutors, the families of the nine convicted persons (with the exception of Mr Dadashbeyli's) were asked to pay bribes, which they refused. The assumption is that around 20 detainees' releases were "bought". None of the convicted people had ever even publicly criticised the government.

112. Some alleged members of this group are known to be secular persons, others Shi'ites, and yet others Sunnis. The judgments refer to relations with both Iran and Saudi Arabia, as well as with Free Masons' lodges. My interlocutors found it unlikely that Shi'ites (supported by Iran) and Sunnis (supported by Saudi Arabia) would enter into a conspiracy together with Free Masons. Relations between the two main currents of Islam in Azerbaijan are generally seen to be as cold as those between the two countries allegedly supporting them. Observers found it more likely that the authorities had conjured up an imaginary "Islamist conspiracy" in order to shore up their support among secular Azerbaijanis and Western countries.

113. Whilst some members of the group "confessed" to being part of such a conspiracy, they allegedly did so under torture. One of the accused, Mr Emin Mammadov, died in pre-trial detention. The prosecution stated that he died of a disease. Relatives of alleged members of the group were pressured to refrain from speaking with human rights defenders. After the judgments were passed, the relatives of the convicted persons nevertheless founded a support group, claiming in particular that the confessions were made under torture. Mr Dadashbeyli, who was described to me as an articulate, highly educated person, also complained of having been tortured. He specified during the trial that he was beaten and given psychotropic drugs.

114. According to the lawyers, the searches leading to the seizures of weapons and ammunition were flawed in the same way as those in the IPA cases.[59] The investigators reportedly did not even have search warrants or take fingerprints off the items seized.

115. In the judgment, Mr Dadashbeyli was identified as the "leader" of this group, without any justification or evidence. According to the lawyers, most people accused of being members of the group said during the trial that they did not even know each other personally before they were arrested, except for casual encounters in a café, discussing political and religious topics; the prosecution did not adduce any evidence to the contrary, except for silent[60] video footage of a café scene in which many of the accused could be seen.[61]

116. I was told that the trial judge in Mr Dadashbeyli's case, Mr Anvar Seyidov, is frequently assigned "politically motivated" cases, and that the European Court of Human Rights has already found numerous violations of the Convention in cases tried by judge Seyidov. In the present case, Judge Seyidov reportedly sent a letter dated 24 December 2007 to the Minister for National Security, Mr E. Mahmudov, asking him to reward the MNS employees who had worked on this case.[62] This would appear to be a violation of the constitutional (and conventional) requirements of separation of powers, neutrality, and objectivity of judges.

117. In view of the disturbing lack of evidence other than some confessions obtained in dubious circumstances, the death of a suspect in pre-trial detention, and of pressure exercised against family members of the accused, in conjunction with the unlikely scenario of a joint Shi'ite/Iranian, Sunni/Saudi Arabian and Masonic conspiracy, I consider Mr Dadashbeyli and the other members of his alleged group as presumed political prisoners.

Case No. 27: Gocayev (Gojayev), Samir Edik

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59. See paragraphs 88-104 above.

60. During the trial, the defence asked for video and audio records of conversations between alleged group members to be made available from the Ministry of National Security (MNS). But MNS officials stated that all records had been burnt during a fire in the building of the MNS.

61. According to the lawyers, Mr D. Aliyev and Mr D. Karimov knew each other superficially, and Mr Dadashbeyli, Mr Idrisov and Mr Mehbaliyev were work colleagues in a Western oil company and participated in some children's charity work together with other colleagues.

62. Letter reportedly attached to the case materials before the European Court of Human Rights (Application No. 11297/09).

118. Mr Gocayev was sentenced to 13 years in prison; his case is pending before the European Court of Human Rights.[63]

Case No. 31: Guliyev (Quliyev), Baybala (Beybala) Yahya

119. Mr Guliyev was sentenced to 13 years in prison. He allegedly suffers from tuberculosis and was diagnosed as a "person of schizoid type" in August 2004 by a mental hospital in Sumgayit.

Case No. 39: Idrisov, Mikayil Garib

120. Mr Idrisov was sentenced to 12 years in prison; he reportedly suffers from serious health problems. His case is pending before the European Court of Human Rights.[64]

Case No. 53: Karimov (Kerimov), Rasim Rafig

121. Mr Karimov was arrested upon his return from a "Hajj" visit; he spent nine months in a MNS/Ministry of National Security prison, and sentenced to 11 years.

Case No. 56: Kerimov (Karimov), Jahangir Ramiz

122. Mr Kerimov was sentenced to 14 years in prison, and allegedly suffers from tuberculosis.

Case No. 69: Mehbaliyev, Emin (Emil) Nuraddin

123. Mr Mehbaliyev was sentenced to 12 years in prison.

3.2.1.9. "Hijab case"[65]

124. The following group of cases concerns a number of mostly young persons arrested on 6 May 2011 when they protested in front of the Ministry of Education against the ban on Islamic headscarves (hijab) in schools. They were given prison sentences of between one year and six months, and three years and six months. According to NGO observers, their alleged violence was mainly in self-defence against physical abuses by the police, which is why their cases could be compared to those of the young activists arrested for IPA actions (section 3.2.1.7 above).[66]

125. The expert who examined the judgments (in Azeri language) on my behalf[67] concluded that "accusations against them were exaggerated and sometimes seem non-serious". For example, in the judgment against the first group on 7 October 2011, five participants of the protest action were accused of having injured 30 policemen when they resisted truncheons using sticks and stones. Those who were not videotaped with sticks or stones in their hands were the ones who received the harshest sentences. In the second group, sentenced on 5 December 2011, nobody was taped with stones and sticks, but they (again) received the most severe sentences. In the third group, sentenced on 23 December 2011, nobody was seen on tape in possession of any weapons. Altogether, no injury was detected on any of the demonstrators, although they were accused of actively resisting arrest, and the police video records did not show any of them hitting a policeman or a car. According to the expert, even the official version of the events confirms that the protest action was peaceful, at least until the policemen started to disperse it.

126. The cases of Hasan Mammadov (case No. 65) and Ilgar Musayev (case No. 70) are not related to the protest action against the Hijab ban on 6 May 2011, but to a separate one in Jalilabad on 2 June 2011.

Case No. 2: Abbasov, Elshan Sardar

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63. Application No. 5317/11.
64. Application No. 1697/09.
65. Updated list available (in Azerbaijani language) at http://hicab.org/?p=5560 .
66. The following are links to videos published on Youtube, which appear to confirm this assessment: www.youtube.com/watch?v=f4Xy9wZpgpc; www.youtube.com/watch?v=MaZ4Cee4IH0&feature=related; www.youtube.com/watch?v=73Xf8zTrsqo&feature=related.
67. The expert was Mr Eldar Zeynalov, who had already worked with the Council of Europe's independent experts in 2001-2004 and who participated in the hearing at the committee meeting on 26 January 2012.

127. Mr Abbasov was sentenced to one year in prison.

Case No. 8: Alekberov, Taleh

128. Mr Alekberov was sentenced to one year and six months in prison.

Case No. 16: Arbarov, Taleh

129. He was sentenced to one year and six months in prison.

Case No. 17: Asgarov, Mammad Tofiq

130. Mr Asgarov was sentenced to three years in prison.

Case No. 19: Bagirov, Taleh Kamil

131. Mr Bagirov was sentenced to one year and six months in prison, as an “organiser”.

Case No. 42: Iskandarov (Isgandarov), Zaur Shahlar

132. Mr Iskandarov was sentenced to three years in prison on 5 December 2011; the sentence was confirmed by the Baku court of Appeal on 29 February 2012.

Case No. 45: Ismaylov, Araz Vasif

133. Mr Ismaylov was sentenced to two years and six months in prison.

Case No. 47: Ismaylov, Tarlan
Case No. 48: Jabiyev, Azer
Case No. 14:[68] *Mammadov, Nurani Ahmad*

134. These three persons were sentenced to two years in prison.

Case No. 65: Mammadov (Mammedov), Hasan Alipasha
Case No. 70: Musayev, Ilgar

135. Mr Mammadov and Mr Musayev were sentenced to three years and six months and three years respectively for “hooliganism” after having given public speeches against the headscarf ban in Jalilabad at the feast of “Ashura” on 2 June 2011. The verdict was based only on the testimony of police officers on the detainees' resisting arrest.

Case No. 75: Novruzov, Chingiz Farman

136. Mr Novruzov received a prison sentence of one year and six months.

Case No. 76: Nuriyev, Rufat Fazil

137. Mr Nuriyev was sentenced to two years in prison.

Case No. 88: Valiquliyev (Valiguliyev), Rashad

138. Mr Valiquliyev was sentenced to one year and six months in prison.

3.2.1.10. Other emblematic political cases

139. The following cases are perhaps the most emblematic as regards the treatment of perceived political opponents by law enforcement authorities, and concern former Economic Development Minister Farhad Aliyev. The authorities targeted not only the former minister, who was first arrested for participating in an alleged c*oup d’état* and, after 17 months spent in pre-trial detention, accused of totally different crimes; they

68. See Appendix 2, case No. 14.

also persecuted his family members and former collaborators. The single-minded determination of the authorities is further illustrated by the fact that the authorities have not even reacted to numerous appeals, including from the Assembly's Committee on Legal Affairs and Human Rights, to release Mr Aliyev on humanitarian grounds, in view of his serious health problems.

Case No. 10: Aliyev, Farhad

140. The former Minister for Economic Development was arrested on the eve of the parliamentary elections of 2005 and accused of participation in a *coup d'etat*. However, during the trial he was only accused of economic crimes (abuse of power, stealing government property) and sentenced to 10 years in prison.

141. As Minister for Economic Development, Farhad Aliyev had strongly criticised large-scale corruption and the non-transparent use of oil revenues, and had begun implementing serious reform measures to prevent abuses of power by government officials (namely the reduction of the number of business activities requiring a license from 270 to 30, creation of the Oil Fund).[69] The subsequent campaign against him targeted all his family members and many of his close collaborators, including one (Alihuseyn Shaliyev) who died in detention allegedly after he refused to testify against Farhad Aliyev. Immediately after Mr Aliyev's arrest, on 3 November 2005, the President of Azerbaijan reportedly made threatening and prejudicial statements against him.[70] The trial against Mr Aliyev was apparently marred by particularly serious procedural violations. After the original accusation of an attempted *coup d'état* could not be corroborated in any way, new charges of "economic crimes" were brought against him after 17 months, during which Mr Aliyev was kept in pre-trial detention. He was allegedly put under severe pressure (*inter alia* by threats to pin the murder of the well-known journalist Elmar Huseynov on him), in order to force him to admit to planning an "orange revolution" in collusion with the secret services of several western countries. The trial took place in a small courtroom filled in advance with purported "victims" of Mr Aliyev so that human rights defenders, journalists, and foreign representations had practically no access. His lawyers and witnesses were also allegedly put under pressure, and his lawyers were not allowed to contest evidence brought forward by the prosecution or to introduce evidence of their own. Finally, people arrested and indicted alongside Mr Aliyev were released after they gave incriminatory testimony against him. A close collaborator of Farhad Aliyev in the Ministry of Economic Development, Mr Alihuseyn Shaliyev, was also arrested and reportedly subjected to torture in order to make him testify against Farhad Aliyev. He died in the hospital of the penitentiary service and the causes of his death were reportedly never properly investigated.

142. Farhad Aliyev also has serious health problems. The Committee on Legal Affairs and Human Rights asked the authorities for his release on humanitarian grounds in September 2011. The European Court of Human Rights found several violations of Articles 5 and 6 of the Convention[71] (his brother Rafiq won a judgment in his favour on 6 December 2011).

143. In view of the political overtones of the trial against a former minister, whose economic reform initiatives posed a threat to established "monopolists" linked to the authorities in place, the numerous procedural violations committed before and during the trial, the additional persecution of Mr Aliyev's relatives and close collaborators, along with the excessively harsh sentencing and treatment in prison of an elderly, seriously ill man, I consider Farhad Aliyev as a presumed political prisoner in accordance with our criteria.[72]

Case No. 12: Aliyev, Rafiq

144. Rafiq Aliyev is the brother of Farhad Aliyev (case No. 10) and former president of "Azpetrol". Like his brother, he was arrested on the eve of the parliamentary elections of 2005 and accused of economic crimes (abuse of power, stealing government property). Many observers considered at the time that the purpose of the arrest was to increase the pressure on his brother Farhaq to "confess" to a political plot. When the

69. I have received extensive documentation on these reform initiatives, as well as statements he made during visits to the United States and other Western countries before his arrest, from Farhad and Rafiq Aliyev's legal representatives.
70. The detailed wording, translated into English, was made available to the rapporteur by Mr Aliyev's representatives.
71. Application No. 37138/06, judgment of 9 November 2010 (final).
72. The legal representatives of Farhad and Rafiq Aliyev also proceeded with a point-by-point analysis under the independent experts' criteria, which, for reasons of space, I cannot present here in the same detail. Lawyers and human rights activists who are not acting on behalf of the Aliyev brothers confirmed this assessment and noted, in particular, that the prison sentences for economic crimes of 10 and 9 years respectively and the confiscation of their assets was extraordinarily harsh also by normal Azerbaijani standards.

maximum pre-trial detention period for economic crimes expired, he was accused of participation in a planned *coup d'état*. When this accusation could not be corroborated at all, he was sentenced to nine years in prison for various economic crimes.

145. Like his brother, Rafiq Aliyev successfully applied to the European Court of Human Rights,[73] which found violations of the Convention concerning the excessive length of his pre-trial detention, lack of judicial review and breach of his right to private property (Article 1 of Protocol No. 1). In my view, Rafiq Aliyev is a presumed political prisoner for the same reasons as his brother.

Case No. 11: Aliyev, Mamedali Dilavar

146. Whilst this is a "new" case, in that Mamedali Aliyev was only arrested in 2008, it is closely related to the so-called "Case of the Generals" (alleged attempted *coup d'état*). The people convicted in that case had been included on the "List of 716" examined by the Secretary General's independent experts (Rahim Gaziyev, Alikram Gumbatov, Elkhan Abbasov, Huseynbala Huseynov, Rafik Agayev). In 2002, the experts recognised all of them as political prisoners and they were all subsequently released.[74] Unfortunately, Mamedali Dilavar Aliyev, who is a supporter of former president Ayaz Mutalibov and Vice-Chair of the pro-Mutalibov "Labour Party", had the bad luck of being arrested only in 2008. His case, therefore, was not examined by the independent experts. But I am convinced that he would be recognised as a political prisoner using the same criteria and should therefore be released without further delay.

147. Mr Aliyev is 70 years old and he is in very bad health. He should therefore also be released on humanitarian grounds.

Case No. 24: Farzullayev Jeyhun Hidayet

148. Mr Farzullayev was arrested on 8 January 2011 by Nasimi district police, alongside Nemat Panahov (case No. 81 below), a well-known political opposition activist. Mr Farzullayev was allegedly ordered by the deputy head of the police department to commit perjury against Mr Panahov. When he refused to do so, he was arrested and charged alongside Mr Panahov and finally sentenced to four years in prison for "hooliganism".

Case No. 77: Panahov, Neymat (Panahly, Nemat)

149. Mr Panahov is one of the historic leaders of the national liberation movement of Azerbaijan. Some time ago he returned to active political life in opposition to the present government, which he sharply criticised in public. He was arrested on 8 January 2011 for "hooliganism" (Article 221 of the Criminal Code) and deliberately causing bodily harm (Articles 126 and 127), and sentenced to six years in prison. There are serious allegations of procedural violations, including that the police tried to pressure another person, Farzullayev Jeyhun Hidayet (case No. 24 above) into giving false testimony against Mr Panahov. In court, the purported victim (of insults and beatings) and other witnesses presented by the prosecution actually denied the accusations. The court apparently simply ignored these testimonies as well as those of eyewitnesses of the defence saying that no crime had taken place. The lawyers who came to work with me in Berlin in May 2012 confirmed these allegations, which I had a hard time believing. They cast a shadow on the objectivity and even professionalism of Azerbaijani courts in politically charged cases.

150. Other human rights defenders[75] point out that the main reason for Mr Panahov's arrest was his sharp criticism of the government published in the "*Nota P.S.*" newspaper, complaining, *inter alia,* of election manipulations he faced in his district. These activists also note that items seized at Mr Panahov's house such as video-cassettes related to the National Liberty Movement, are not linked to the "hooliganism" charge. In addition, they remark that pressure was also put on Mr Panahov's family (he is responsible for six children and two elderly parents), including by cutting off the electricity and heating of Mr Panahov's residence at the end of December 2011. Mr Panahov's 83-year-old father, who was living at his house, died of cardiac problems. Contrary to Azerbaijani prison rules,[76] Mr Panahov was not even allowed to attend his father's funeral.

151. An application to the European Court of Human Rights lodged by Mr Panahov is reportedly pending.

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73. Application No. 45875/06, judgment of 6 December 2011.
74. See Assembly Doc. 10564 of 31 May 2005 (report by Malcolm Bruce on political prisoners in Azerbaijan), Appendix II.A ("pilot cases").
75. The Committee of Support to Nemat Panahli, chairperson of the Azerbaijan National Statehood Party, Leader of the Azerbaijani National Liberty Movement in 1988 (letter of 28 February 2012 addressed to Andres Herkel, Chairperson of the Assembly's Monitoring Committee).

152. In view of his harsh and discriminatory treatment both by the court and the prison authorities, which can only be explained by motives related to his political activities, I consider Mr Panahov as a presumed political prisoner.

Case No. 32: Gurbanov, Maarif

153. Mr Gurbanov was Head of Department in the Ministry of Economic Development when he was arrested in 2005 and sentenced to seven years and six months in prison for embezzlement and corruption. The case is directly linked to those of the Aliyev brothers (cases Nos. 10 and 12 above), who are presumed political prisoners. Mr Gurbanov allegedly refused to give false testimony against Farhad Aliyev and was given his particularly harsh prison term in retribution.

154. He has reportedly lodged an application to the European Court of Human Rights.

Case No. 41: Insanov, Ali

155. This is another emblematic case which has already been raised in several resolutions of the Parliamentary Assembly. Mr Insanov is a former Minister of Health, internationally renowned medical scientist, and former member of the Executive Committee of the World Health Organisation (WHO). He was arrested on 20 October 2005 on the eve of the parliamentary elections, accused of participating in an attempted *coup d'état*. But during the trial he was only accused and convicted of economic crimes (abuse of power, stealing government property). He was sentenced to 11 years in prison, where he is reportedly kept under especially harsh conditions, despite his age (Mr Insanov was born in 1946) and the serious health problems that he has been suffering from.

156. Reportedly, family members and former collaborators were also persecuted intensely. Many lost their jobs, had their assets confiscated, or were prosecuted on the basis of allegedly trumped-up charges. Even Mr Insanov's internationally acclaimed medical textbook on the treatment of tuberculosis was prohibited from sale in Azerbaijan.

157. Mr Insanov's case was raised in two previous Assembly texts adopted on 16 April 2007[77] and 6 June 2008.[78] The application he lodged on 31 March 2008 before the European Court of Human Rights is still pending.[79]

158. Given the political backdrop of this case, the change of the charges during pre-trial detention, the intense pressure on family members and former collaborators, and the discriminatory treatment of Mr Insanov, illustrated by the unusual length of his prison sentence, the confiscation of all his assets, the banning of his medical textbook and his harsh treatment in prison despite his age and health issues, I cannot but consider Mr Insanov a presumed political prisoner.

3.2.2. "Old cases" of presumed political prisoners

159. The following are either still unresolved cases of the list of 716 alleged political prisoners arrested up to 2000 and examined by the independent experts, or persons who were arrested at a later date for having participated in the same events, or who were mistakenly omitted from the list of 716 but included in the second list of 107 cases examined by the Assembly's first follow-up report in 2004.

76. The above-mentioned letter refers to Article 89, paragraphs 1, 2, 4, and 5, of the Code on Execution of Punishments at Penitentiary Institutions of the Republic of Azerbaijan.
77. Resolution 1545 (2007), paragraph 7.13.
78. Doc. 11627 dated 6 June 2008, "The functioning of democratic institutions in Azerbaijan", paragraphs 137 and Appendix II.
79. Application No. 16133/08 (see partial decision as to admissibility of 19 November 2009).

3.2.2.1. OPON (March 1995 events)

160. The first three cases are the most emblematic – they were recognised as "political prisoners" by the independent experts in 2002 and have still not been released. The detainees concerned were participants in the 1995 rebellion of the "OPON" special police unit ("March events" of 1995).

Case No. 15: Amiraslanov, Elchin Samed

Case No. 55: Kazymov, Arif Nazir

Case No. 78: Poladov, Safa Alim

161. The cases of these three men were studied in great detail by the independent experts, as pilot cases, and recognised by them as political prisoners.[80] They are still serving life sentences in Qobustan prison.

162. The rationale for their recognition as "political prisoners" included serious procedural violations, such as serious accusations of torture in the cases of Mr Amiraslanov and Mr Kazymov; denial of access to a lawyer before and during the trial in the case of Mr Amiraslanov; the harassment of other family members, including the police seriously beating Mr Amiraslanov's younger sister; reliance on confessions made during the investigation and later retracted in the case of Mr Kazymov; and the trial court lacking independence and impartiality, with retired military officers serving as "people's assessors".

163. In September 2007, the remaining members of the "Working Group on political prisoners" (from which several leading NGO representatives were however excluded by then) reportedly agreed with the authorities that Elchin Samed Amiraslanov, Arif Kazymov and Safa Alim Poladov were in fact "criminals". Mr Poladov was retried and found guilty again.

164. The following five cases also concern alleged participants in the "OPON" mutiny, but they were not recognised as "political prisoners" by the independent experts.

Case No. 4: Abdullayev, Shamsi Vahid[81]

165. Mr Abdullayev was not recognised as a political prisoner by the independent experts. In his case, no allegations of torture were made. There is also no reference by the independent experts to the court lacking independence and impartiality, although Mr Abdullayev was tried together with Mr Amiraslanov (case No. 15 above). Most importantly, Mr Abdullayev confessed to the (common law) killing of a businessman.

Case No. 50: Karimov (Kerimov) Dayanat Kerim[82]

166. Mr Karimov was also not recognised as a political prisoner by the independent experts. Again, there were no allegations of torture. Mr Karimov was convicted in five separate public trials of serious common-law crimes, including murder. None of the judgments makes reference to Mr Karimov's participation in the events of March 1995 (OPON mutiny).

Case No. 72: Mustafayev, Hasan Huseyn[83]

167. Mr Mustafayev was also not recognised as a political prisoner by the independent experts; without there being any allegations of torture, he was convicted of serious common-law crimes, including murder, and hostage-taking.

Case No. 87: Tahirov, Aliyusif Damet[84]

168. Mr Tahirov was not considered a political prisoner despite the fact that he was also convicted for participation in the OPON/March 1995 events, because he was also convicted for a number of unrelated serious crimes (including murder, kidnappings); the case was mentioned in the judgment of the European Court of Human Rights of 19 January 2006 (Application No. 35608/02).

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80. SG/Inf(2004)21 (pp. 38 pp/Amiraslanov and 62 pp/Kazymov), list of 716/132, 341 and 523, pilot cases Nos. 5/ Amiraslanov and 15/Kazymov; Poladov: opinion of 12 May 2003, SG/Inf(2004)21 addendum part I, pp. 213-218.
81. List of 716/22, SG/Inf(2004)21, Addendum part II (pp. 283-285), opinion of 12 May 2003.
82. List of 716/350, SG/Inf(2004)21, Addendum part II (pp. 377-382), opinion of 11 December 2003.
83. List of 716/475, SG/Inf(2004)21, Addendum part II (pp. 421-425), opinion of 11 December 2003.
84. List of 716/676, SG/Inf(2004)21, Addendum part II (pp. 486-489), opinion of 7 July 2004.

169. I share the independent experts' view regarding the above cases (Nos. 4, 50, 72 and 87). The detainees should not be recognised as presumed political prisoners because they were convicted of serious common-law crimes independently of their participation in the events of March 1995 (OPON mutiny).

170. According to information received from NGOs, a number of persons who were tried and convicted alongside the three cases recognised as political prisoners (cases Nos. 15, 55 and 78), and who never appeared on any list of alleged political prisoners or were taken off such lists for reasons not related to their alleged criminal activities are still in prison today. To the extent that these were very young, low-ranking OPON soldiers who were only following orders, and did not commit any violent crimes besides their participation in the March 1995 events, they ought to be released in view of the length of time in prison already served and the serious procedural violations surrounding this mass trial.

171. This argument is particularly strong following the amnesty, at the end of 2011, of Mr Nizami Orudj Shamuradov, who was the senior commander of all those OPON soldiers who are still in prison. He spent only four years in prison after living in hiding for many years and turning himself in voluntarily in 2007. In order to avoid such an "irony of fate", in the words of an Azerbaijani human rights lawyer, the authorities should now turn the page and also free the other, lower-ranking persons belonging to this group of cases.

3.2.2.2. Supporters of former Prime Minister Suret Huseynov/Guseynov ("SH case")

172. Another "historic" group of cases is that of the supporters of former Prime Minister Suret Huseynov. Suret Huseynov, who was initially convicted of attempting a *coup d'état* in 1994, was recognised as a political prisoner by the independent experts[85] and subsequently released. But a number of his supporters are still in prison. They were not recognised as political prisoners by the independent experts because they were convicted of serious, violent, common-law crimes, such as murder, robbery and abduction, without there being allegations of torture or other particularly serious procedural violations.

173. The following cases fall into this category.

Case No. 37: Huseynov, Magsud Vagif (Maqsud Vaqif)[86]

174. Mr Huseynov is the son of Vagif Huseynov (case No. 38 below).

Case No. 38: Huseynov, Vagif (Vaqif) Rza[87]

175. Mr Huseynov was a close ally of former Prime Minister Suret Huseynov and a member of parliament for the opposition Popular Front of Azerbaijan. But he was convicted in a trial, in which he had the benefit of basic defence rights, of serious violent common-law crimes (murder, robbery, abduction), as well as "usurping power" in an administrative district in conjunction with the attempted *coup d'état* by Suret Huseynov.

Case No. 46: Ismaylov, Rashid Nurulla[88]

176. Mr Ismaylov joined the military unit commanded by Suret Huseynov after escaping from custody, in which he was held for participating in a killing spree as part of an armed gang. The experts found that "[a]lthough the events for which Mr Ismaylov was convicted were related to political events, their legal qualifications are of a common law nature".

Case No. 52: Karimov (Kerimov), Keramat Pasha[89]

177. Mr Karimov, a cousin of Suret Huseynov, was one of the main "executors" of the attempted *coup d'état* allegedly instigated by Suret Huseynov in 1994. But according to the court's judgment, he was involved in violent acts (including "non-political" crimes such as attempted murder, robbery, abduction and torture) and

85. Pilot case No. 17, SG/Inf (2001)34, addendum 1, pp. 67-69; rationale: illegal extradition from Russia, torture (traces visible during experts' prison visit), intimidation of numerous relatives, including an elderly mother; 30 co-accused retracted confessions made during pre-trial investigations because of torture allegations ignored by the court.
86. SG/Inf(2004)21, Addendum II, pp. 352-355, Opinion of 15 June 2004 (list of 716/283).
87. SG/Inf(2004)21, Addendum II, pp. 356-361, Opinion of 15 June 2004 (list of 716/298).
88. SG/Inf(2004)21, Addendum II, pp. 366-368, Opinion of 12 May 2003 (list of 716/331).
89. SG/Inf(2004)21, Addendum II, pp. 383-389, Opinion of 7 July 2004 (list of 716/358).

incited others to commit such acts, so that the life sentence he received cannot be regarded as disproportionate for political reasons. Allegations by relatives of torture in pre-trial detention were not repeated by Mr Karimov during his trial.

Case No. 71: Mustafayev, Elshad Teyyub[90]

Case No. 73: Mustafayev, Maqsad Teyyub[91]

178. Both were members of the armed group of Vaqif Huseynov involved in the *coupd'état* attempt allegedly instigated by Suret Huseynov (see case No. 38 above). Both were convicted of violent, "non-political" crimes, including the premeditated murder of a prosecutor. Some contradictions in the judgments remain, including the fact that both should have normally still been in prison on the basis of previous convictions at the time when they allegedly committed some of the crimes mentioned in the indictment.

179. Regarding the refusal of the independent experts to recognise any of the above cases (Nos. 37, 38, 46, 52, 71 and 73) as "political", several Azerbaijani human rights defenders noted that the one or the other of these persons may simply have been unaware of the ongoing review procedure, or not have had competent legal representatives and failed only for this reason to make a prima facie case of the existence of serious violations, as the experts' criteria require.

180. I feel uncomfortable dismissing these considerations, but I am unable to second-guess the findings of the independent experts who had greater resources at their disposal in order to examine these cases in depth. That said, given the length of time that they have already spent in prison, they should be eligible for release on parole under the normal rules. If the authorities persist in refusing to apply the normal rules to these persons, this could in itself constitute discrimination and raise suspicions as to political motivation.

3.2.2.3. Members of the paramilitary group "Quaranqush" (Swallow), 1993

181. The "Quaranqush" detachment, comprising eight volunteers, was created for the defence of the Gubadli border district against the threatened Armenian military invasion. One member of this group was killed in action and posthumously celebrated as a hero; another left the detachment because he was wounded in action. After the creation of the Azerbaijani national army in October 1991, the remaining six members of the "Quaranqush" detachment were transferred to regular police and army units. According to the authorities, they remained together for purposes of gangster-style criminal activity in this district; they were also accused of an armed attack on a police department and the killing of five purported "traitors" on the day of the Armenian invasion. According to human rights NGOs, the group's links to the Popular Front movement[92] worried the newly established authorities, who persecuted the members of this group in a particularly harsh way. One member of the group, F. Shahmuradov, was killed during the arrest. Another, M. Maharramov, committed suicide. A third one, Mr Qayibov, attempted suicide twice (during the arrest and whilst in detention). Two others, the Novruzov brothers, died during pre-trial investigation.

Case No. 58: Maherramov, (Maharramov) Nadir Eldar

182. As an alleged member of "Quaranqush", Mr Maherramov was sentenced in 2002 to life in prison. He was included in the "List of 107" discussed in the Assembly's earlier reports on political prisoners in Azerbaijan. My predecessor as rapporteur on this issue, Mr Malcolm Bruce, who was still able to carry out a fact-finding visit to Azerbaijan, commented on this case in his 2005 report as follows:

> *"I confess that I have been particularly struck by the case of Nadir Maharramov, who was arrested in 2003 and sentenced to life imprisonment for supposedly being part of the Garangush reconnaissance group. This group was 'dissolved' in 1993 (a mild euphemism meaning that its members, who were initially heroes of Azerbaijan, were hunted down, arrested, tortured and well and truly liquidated!). Nadir was 18 years old at the time of the events and all the testimonies agree that he was never part of this group."*[93]

90. SG/Inf(2004)21, Addendum II, pp. 418-420, Opinion of 12 May 2003 (list of 716/474).
91. SG/Inf(2004)21, Addendum II, pp. 426-428, Opinion of 12 May 2003 (list of 716/476).
92. A civic/political movement, active between 1989 and 1995, which had strong popular support but is not to be confused with the "Azerbaijan Popular Front" (AXCP), opposition party established in 1995.
93. Doc. 10564, paragraph 70.

183. Noting that the group, after the two casualties, had six members left, three of whom died during their arrest or in detention, and three (cases Nos. 66, 79 and 85 below) still in detention, I can only join my colleague and invite the authorities to redress this apparent injustice done to this man who has by now spent a third of his life in prison.

Case No. 66: Mammedaliyev (Mammadaliyev), Sahib Nureddin[94]

Case No. 79: Qayibov, Intiqam Yusif[95]

Case No. 85: Shahmuradov, Yashar Khasay[96]

184. These three men were sentenced to death in 1993 (later commuted to life in prison). They were members of the paramilitary group "Qaranqush" (Swallow) and supporters of the Popular Front movement. They were not recognised as political prisoners by the independent experts. Their rationale was that whilst the court did not specify each gang member's personal contribution to the crimes committed by members of the group, they were all convicted for participation in a particularly violent crime (premeditated murder).

185. Whilst I feel somewhat uncomfortable not recognising these three detainees as presumed political prisoners, given the obvious political background of the harsh treatment these former "heroes" received, I do not wish to second-guess the conclusions of the independent experts, who based their decisions on the violent nature of the crimes for which the prisoners were convicted, in line with the criteria to which I have also subscribed in the first part of this report.

3.2.2.4. Other "old cases"

Case No. 14: Aliyev, Sadykh Mikayil[97]

Case No. 67: Mammedveliyev, Sabuhi Seyfeddin

186. Both were arrested in 2000 and sentenced to life in prison as leading members of a group called "Bohran" (Crisis). The Azerbaijani State Security Committee (KGB) created this group in 1989 in order to counteract security threats allegedly posed, *inter alia*, by the Popular Front of Azerbaijan movement. The group allegedly committed several politically motivated murders against supporters of President Heydar Aliyev, along with other privately-motivated crimes. Mr Sadykh Aliyev was not recognised by the independent experts as a political prisoner because of the violent nature of the actions for which he was convicted, and his application to the European Court of Human Rights was held inadmissible. Mr Mammedveliyev appears on the "List of 107" attached to the Assembly's previous report on this issue prepared by Malcolm Bruce. I do not wish to deviate from the assessment by the independent experts and therefore do not consider the two men as presumed political prisoners.

Case No. 51: Karimov, Kamran Sultan

Case No. 59: Mahsimov (Maksimov), Rahib Shaval

Case No. 81: Safaraliyev, Alfat Khalid[98]

187. Mr Karimov was sentenced in 1999 to 14 years in prison as a member of the Lezgi National Movement "Sadval" (Unity). Reportedly, the group is officially registered in the Russian Federation, but is considered an illegal terrorist group in Azerbaijan. It had campaigned in the 1990s for the unification of all Lezgins in one State ("Lezgistan") covering areas belonging to Russia (the south of Dagestan) and northern Azerbaijan. Mr Karimov was convicted of having participated in an armed attack on border guards.

188. Mr Mahsimov, the leader of the Azerbaijani branch of "Sadval," was sentenced in 1994 to life imprisonment for his alleged participation in the terrorist attack on the Baku subway in 1994 killing 14 persons.

189. Both were included on the "List of 107" new political prisoners by Malcolm Bruce.[99] Mr Mahsimov's application to the European Court of Human Rights was successful in that the Court found a violation of Article 6, paragraph 1 (fair trial), based on the fact that the cassation proceedings before the Supreme Court of Azerbaijan took place in Mr Mahsimov's absence.[100]

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94. SG/Inf(2004)21, Addendum II, pp. 398-401, Opinion of 11 December 2003 (list of 716/386).
95. SG/Inf(2004)21, Addendum II, pp. 438-441, Opinion of 11 December 2003 (list of 716/550).
96. SG/Inf(2004)21, Addendum II, pp. 466-469 (list of 716/649).
97. SG/Inf(2004)21, Addendum II, pp. 306-310 (list of 716/105).
98. SG/Inf(2004)21, Addendum II, pp. 458-462 (list of 716/625).
99. Doc. 10564 of 31 May 2005, Appendix III.

190. Mr Safaraliyev was sentenced in 2000 to 15 years in prison for his participation as an accessory in the bombing of the subway of Baku in 1994. He had allegedly also participated in a riot in Qobustan prison in January 1999. The independent experts did not recognise him as a political prisoner in view of the violent nature of the acts for which he was convicted. I share this view.

Case No. 18: Badalov, Rovshan

Case No. 68: Mammedov (Mammadov), Mammad Ali

191. Both detainees were allegedly fighters in the Chechnya and Karabakh conflicts.

192. Mr Badalov was arrested in 2004 and sentenced to nine years in prison for murder, burglary, and the creation of illegal armed formations.

193. Mr Mammedov was sentenced in 2001/2003 to life imprisonment for killing a border guard whilst smuggling weapons into Georgia. His lawyer denies that Mr Mammedov was the killer, saying that he only shot in the air, and that the court one-sidedly interpreted the evidence to Mr Mammedov's disadvantage in order to avoid implicating members of the Azerbaijani Interior Ministry forces in the incident. Mr Mammedov lodged a successful application to the European Court of Human Rights,[101] which found violations of Article 6 (fair trial), but not of Article 3 (prohibition of torture and inhuman and degrading treatment), due to a failure to exhaust internal remedies. Other complaints based on Articles 5, 6 13 and 14 of the Convention were rejected as manifestly ill-founded. Mr Mammedov was included on the "List of 107". I nevertheless hesitate recognising either of them as a presumed political prisoner due to the lack of information on specific procedural violations committed against them and of any "political" background of the deeds for which they were convicted and which constitute violent crimes by any standards.

4. Conclusions

194. In the light of the different groups of cases that I have examined and which I briefly presented in this report, my political conclusions are the following:

195. In Azerbaijan, the judicial process can be and still appears to be abused for political ends, in order to intimidate, silence, or otherwise neutralise opponents seen as threats by the ruling elite, both activists of secular or religious opposition parties and independent civil society activists, lawyers, human rights defenders, and journalists. One worrying symptom that was recently brought to my attention by the Norwegian-based NGO "Human Rights House" is the increasing pressure brought to bear on lawyers who still dare to defend "political" cases.[102]

196. This strategy of intimidation does not require locking up all opponents all the time. The apparent "game", consisting in sentencing some opponents more harshly, others less so, in making some serve out their entire sentence and releasing others early – preferably after a public show of submission and repentance – is unworthy of a member State of the Council of Europe. Professional judges owe it to their own self-respect not to play along with such "games" and to convict only on the basis of credible evidence of an actual crime.

197. When an elderly politician can be convicted of hooliganism and sentenced to six years in prison after the witnesses of the prosecution, including the alleged victim himself, testified in court that there was no crime,[103] are we still dealing with courts within the meaning of the European Convention on Human Rights? Is the Convention system, is the European Court of Human Rights, equipped to deal with trumped-up cases built on fabricated evidence, such as the drugs "found" on Mr Fatullayev shortly after the Court had held,

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100. Judgment of 8 October 2009 (Application No. 38228/05).
101. Judgment of 11 October 2011 (Application No. 38073/06).
102. Lawyer Elchin Namazov, involved in defending participants in the protest action of 2 April 2011 (see paragraphs 41 pp. above) was allegedly threatened by the head of the Ganja city police department with drug possession charges and disbarment for defending youth activists Azar Jabiyev and Fakhri Ilyasov (see paragraphs 133 et 93 above); the head of the Bar Association threatened him with disbarment for defending Bakthtiar Hajiev (see Appendix 2, No. 10); employees of the Ministry of National Security threatened him with disbarment (sic!) for defending journalist Ramin Bayramov (see paragraphs 73-75 above). Lawyer Khalid Bagirov, who had defended Vidadi Iskandarov (see paragraphs 61 pp. above) and Elnur Mecidli (see Appendix 2, No. 17) is reportedly already suspended from the Bar. Lawyer Elchin Sadigov, specialising in the protection of media rights, who had defended *inter alia* Eynulla Fatullayev, was accused of accepting payments from foreign ambassadors and opposition-minded deputies in order to engage in propaganda against the government. Lawyers Intigam Aliyev and Yalchin Imanov reportedly also face pressure on a regular basis and are frequently prevented from meeting their clients and exercising their professional duties.
103. See the case of Neymat Panahov, paragraphs 149 pp above.

exceptionally, that the only way to execute the judgment finding numerous violations of the Convention in his earlier conviction for a “crime” of opinion was to release him at once? Cases such as those in which weapons, ammunition (even just one cartridge), or drugs are “found” after searches targeting opponents, “witnessed” always by the people who are sometimes miraculously present in several places at the same time? In the most extreme (and clumsy) cases of manipulation, the European Court of Human Rights will have ways and means to find procedural or other violations of the Convention. But what then? Even findings of serious procedural violations, usually several years after the final instance of the national courts, does not automatically lead to a retrial, let alone the acquittal and release of the prisoner. The Convention system is based on the political will of all States to uphold human rights and to allow their partners in the peer review procedure laid down in the Convention to help them correct any mistakes made. Frankly, I am not convinced that the current authorities in Azerbaijan have this political will, after they failed to co-operate with me when I tried for several years to enter into a constructive dialogue with them to discuss the problems of political prisoners and find solutions.

198. But the Azerbaijani delegation can still prove me wrong by accepting and supporting the pragmatic and constructive proposals that I am submitting for the Assembly's approval in the draft resolution based on this report.

Appendix 1 – Consolidated list of alleged political prisoners (in alphabetical order)[104]

1. ABBASLI (Abbasly), Tural
2. ABBASOV, Elshan Sardar
3. ABBASOV, Faramiz (Faramaz)
4. Abdullayev, Shamsi Vahid
5. ABDULLAYEV, Vagif
6. AGAYEV, Farig (Farid) Nadir
7. AHUNDZADE, Ruxulla (Akhundzadeh, Rufulla)
8. ALEKBEROV, Taleh
9. ALIYEV, Ceyhun (Djeyhun/Jeyhun) Saleh
10. ALIYEV, Farhad
11. ALIYEV, Mamedali Dilavar
12. ALIYEV, Rafiq
13. ALIYEV, Rashad Ismail
14. Aliyev, Sadykh Mikayil
15. AMIRASLANOV, Elchin Samed
16. ARBAROV, Taleh
17. ASGAROV (Asgerov), Mammad Tofiq
18. Badalov, Rovshan
19. BAGIROV, Taleh Kamil
20. *Bayramli, Anar*
21. BAYRAMOV, Ramin
22. DADASHBEYLI, Said Alakbar
23. EYVAZLI, Zulfugar (Zulfuqar)/Eyvazov, Zulfigar
24. FARZULLAYEV, Jeyhun Hidayet
25. GANIYEV, Arif
26. GOCAYEV (Gojayev), Samir Edik
27. *Gonagov, Vugar*
28. *Gulaliyev, Ogtay*
29. *Guliyev, Zaur*
30. GULIYEV (Quliyev), Baybala (Beybala) Yahya
31. GURBANOV, Maarif
32. HAJILI (Hajily), Arif
33. HAJIBEYLI, Rufet (Rufat)
34. HASANLI, Shahin

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104. Names in capital letters indicate persons recognised as presumed political prisoners; names in italics indicate detainees who are on the “watch list” of persons in detention on remand.

35. HASANOV, Babek
36. Huseynov, Magsud Vagif (Maqsud Vaqif)
37. Huseynov, Vagif (Vaqif) Rza
38. IDRISOV, Mikayil Garib
39. ILYASOV, Fahri
40. INSANOV, Ali
41. ISKANDAROV (Isgandarov), Zaur Shalar (Toghrul)
42. ISKENDEROV (Isganderov/Isgandarli), Vivadi
43. ISMAYLOV, Araz Vasif
44. Ismaylov, Rashid Nurulla
45. ISMAYLOV, Tarlan
46. JABIYEV, Azer
47. JANIYEV, Aydin
48. Karimov (Kerimov), Dayanat Kerim
49. KARIMOV, Kamran Sultan
50. Karimov (Kerimov), Keramat Pasha
51. KARIMOV (Kerimov), Rasim Rafig
52. *Khasmammadov, Taleh*
53. KAZYMOV (Kazimov), Arif Nazir
54. KERIMOV (Karimov), Jahangir Ramiz
55. KERIMOV, Sahib
56. MAHERRAMOV (Maharramov), Nadir Eldar
57. MAHSIMOV (Maksimov), Rahib Shaval
58. MAJIDLI, Elnur
59. MAJIDLI, Mahammad (Mohammad)
60. *Mamedov, Bakthiar*
61. MAMEDRZAYEV, Firdovsi
62. MAMMADLI (Mamedli), Ahad
63. MAMMADOV (Mammedov), Hasan Alipasha
64. Mammedaliyev (Mammadaliyev), Sahib Nureddin
65. Mammedveliyev, Sabuhi Seyfeddin
66. Mammedov (Mammadov), Mammad Ali
67. MEHBALIYEV, Emin (Emil) Nuraddin
68. MUSAYEV, Ilgar
69. Mustafayev, Elshad Teyyub
70. Mustafayev, Hasan Huseyn
71. Mustafayev, Maqsad Teyyub

72. NOVRUZOV, Chingiz Farman
73. NURIYEV, Rufat Fazil
74. PANAHOV, Neymat (Panahly, Nemat)
75. POLADOV, Safa Alim
76. Qayibov, Intiqam Yusif
77. QULIYEV, Ulvi
78. Safaraliyev, Alfat Khalid
79. SAMEDOV, Dayanat
80. SAMEDOV, Movsum
81. *Seyidov, Elnur*
82. Shahmuradov, Yashar Khasay
83. Tahirov, Aliyusif Damet
84. VALIQULIYEV (Valiguliyev), Rashad
85. *Zeynalli, Avaz*

Appendix 2 – Persons who appeared on lists of alleged political prisoners but who are no longer in prison (in alphabetical order)

1. Abdullayev, Mais

Hijab case, released in 2012.

2. Abdurahmanov (Abdurahimov), Ali

Arrested in 2009 (2008?). Supporter of former Prime Minister Suret Huseynov accused of participating in the organisation of a *coup d'etat* in 1994. Suret Huseynov himself was recognised as a political prisoner by the Secretary General's independent experts and released from prison. Released on 14 August 2009.

3. Abdurahmanov (Abdurahimov), Mahir

Arrested in 2009. Supporter of former Prime Minister Suret Huseynov accused of participating in the organisation of a coup d'etat in 1994. Suret Huseynov himself was recognised as a political prisoner by the Secretary General's independent experts and released from prison. Released on 12 June 2009.

4. Ahmadov, Mahir Teyyub

Arrested in 1997, sentenced to 15 years in prison. Case of the murder of MP Ali Antsukhsky (alleged terrorist act). List of 716/49. SG/Inf(2004)21, NPP. Released on 5 November 2010.

5. Aliyev, Fuad Faril

Case of the representatives of the "Juma" mosque; arrested in 2005, sentenced to six years in prison. Released on 13 April 2011.

6. Alisli (Alyshly), Arif

Member of the Popular Front (AXCP/PPFA) opposition party, sentenced to three years in prison. Conditionally released in January 2012.

7. Bagirzade, Zeynal

An active member of the Popular Front Party's Nachichevan branch; was arrested on 27 December 2011 and sentenced on 2 March 2012 to seven years and six months in prison for allegedly faking his disability and obtaining undue assistance. Released in May 2012.

8. Bashirli, Ruslan Djalil

Mr Bashirli is the former head of the "Yeni Fikir" youth movement of the Popular Front party and had actively criticised the government. He was arrested in 2005 for alleged ties with the Armenian secret services. Footage of alleged meetings with Armenian secret services was shown on television. He was sentenced to seven years for espionage. His application to the European Court of Human Rights is still pending (Application No. 32066/07).

He was released on parole in March 2012 only a few months before the end of his term of imprisonment, following an open letter to the President in which he "repented" having joined forces with opposition groups in his youth, assured the President that he had reflected on his mistakes during his time in prison and come to the conclusion that the President deserved the utmost loyalty for all the good he had done for the country.[105]

9. Fatullayev, Eynulla

Journalist (founder and chief editor of Gündelik Azerbaycan and Realny Azerbaijan newspapers, both known for their criticism of the government). Arrested on 20 April 2007, sentenced in separate sets of criminal proceedings for two articles to a total of eight years and six months in prison (for defamation and "threat of terrorism"). The European Court of Human Rights (Application No. 40984/07, judgment of 22 April 2010) found violations of Article 10 (freedom of expression and information) and Article 6 (fair trial) and demanded his release from prison. Released by presidential amnesty on 26 May 2011, after initial attempts, following the Court's judgment, to prosecute him for drug possession.

10. Hajiev, Bakhtiyar

105. The text of this extraordinary letter is available in Azerbaijani and English languages at: http://news.az/articles/society/56578.

A Harvard University graduate, member of the youth movement “Positive Change” and independent parliamentary candidate in 2010, Mr Hajiev was arrested on 4 March 2011 in advance of a protest action on 11 March 2011 (“Great National Holiday”) that he actively promoted through social media. He was charged with evading mandatory military service (as a conscientious objector) and sentenced to two years in prison. In early June 2012, Mr Haijev was released on parole.

Conscientious objection and the right to an alternative service is foreseen in the Constitution of Azerbaijan, but implementing legislation laying down the conditions of alternative service is still lacking, the authorities' argument being the ongoing conflict with Armenia. At least 10 other persons were convicted for the same offence, but they were neither placed under arrest nor sentenced to prison terms.

Mr Hajiev also claims that he was beaten during the pre-trial period, during which he posted his misadventures on social media. He had been placed under house arrest and repeatedly summoned to the police station. During the trial, he requested that evidence be taken in the form of medical expertise and the interrogation of the policemen who had allegedly beaten him, but the court rejected both requests. The Azerbaijan Supreme Court rejected his appeal on 6 December 2011.

Mr Hajiev was recognised as a prisoner of conscience by Amnesty International.

Given the political nature of the crime for which he was convicted, the context of his arrest in conjunction with a protest action he helped organise, his political activities as an independent parliamentary candidate, and the discriminatory, much harsher treatment he received in comparison with other conscientious objectors, in addition to the ill-treatment he suffered during the investigation, which the authorities refused to investigate, Mr Hajiev was also a presumed political prisoner under the Council of Europe's criteria.

11. Hasanov, Elshan

Elshan Hasanov is an opposition party activist, he was convicted of being an “active participant” in the protest action on 2 April 2011 and sentenced to two years in prison. He was released on 22 February 2012.

12. Israfilov, Elnur

Mr Israfilov is the nephew of the Chairperson of the Narimanov district organisation of the opposition party “Popular Front” (AXCP/PPFA); he was sentenced to two years and six months as an “active participant” in the protest action on 2 April 2011. He was pardoned in March 2012.

13. Madatov, Mushfig Israfil

Former bodyguard of the President, released by pardon on 13 April 2011.

14. Mammadov, Nurani Ahmad

“Hijab case”. Released in 2012.

15. Mammedov, Mehman Qardashkan

Arrested in 2006, sentenced to seven years in prison. Supporter of former deputy Minister of Internal Affairs Rovshan Javadov, accused of participating in the organisation of a coup d'etat in 1995. Released as part of the presidential amnesty at the end of 2011.

16. Marqashvili, Khyzyr

Arrested in 2004, sentenced to nine years in prison for alleged murder, burglary, creation of illegal armed formations. Released on 13 August 2008.

17. Mecidli (Macidli) Elnur Arzuman

Arrested on 10 April 2011 and convicted as an “active participant” of the Public Chamber protest action on that day; released on 15 May 2012.

18. Mikayilzadeh Zulfigar

Member of the “Masally” regional organisation, sentenced to five years in prison for preparation of terrorist acts and a *coup d'état.* Released.

19. Milli, Emin

Blogger and youth activist, arrested together with Adnan Hajidze on 10 July 2009; two days earlier, they had been beaten by two men in a restaurant, shortly after disseminating a satirical video over social media criticising the government; sentenced to two years and six months in prison (Hajidze: two years), for wilfully inflicting bodily harm. They were released on 18/19 November 2010 after a storm of protest, in particular in academic circles and in the social media.

20. Namazov, Anar

Nephew of Ali Insanov (former health minister, still in prison), convicted on 20 April 2007 to seven years and six months in prison. Released by presidential decree of 26 May 2011.

21. Namazov, Tapdiq Bahman

AXCP (Popular Front of Azerbaijan) member, arrested in 2003, sentenced to 11 years in prison; list of 107. Released.

22. Orujov, Shirkhan

Arrested in May 2011 and detained on remand as a suspect on the “Hijab” case. On 17 October 2011, the Narimanov district court of Baku sentenced him to three years and six months in prison; but the court suspended the sentence, following which Mr Orujov was released from prison.

23. Savalan(li), Jabbar

Youth activist of the opposition party PPFA. Arrested during the generally peaceful demonstration organised by Ictimai Palata (IP/Public Chamber) on 2 April 2011, sentenced to two years and six months in prison for possession of drugs (allegedly planted on him). Amnesty International prisoner of conscience (see AI press release 30 November 2011). Freed as part of the presidential amnesty at the end of 2011.

24. Shamuradov, Nizami Orudj

Arrested in 2007 (2008?), after having given himself up voluntarily after having been wanted by the police for 13 years, in connection with the case of OPON and sentenced to seven years in prison. Supporter of the former deputy Minister of Internal Affairs Rovshan Javadov, accused of participating in the organisation of a coup d'etat in 1995. Released as part of the presidential amnesty at the end of 2011.

25. Umnyashkin, Alexander

Professor of medicine, arrested in 2005 in conjunction with the case of former Health Minister, Ali Insanov (who had been his academic teacher), sentenced to three years in prison on 20 April 2007. Pardoned by presidential decree in August 2008.

26. Zahid, Quanimat

Sentenced for “hooliganism” following an alleged provocation; released on 17 March 2010.

27. Zeynalov, Akif

Arrested in 2006 and sentenced to 13 years in prison. Supporter of former Prime Minister Suret Huseynov, accused of participating in the organisation of a coup d'etat in 1994. Suret Huseynov himself was recognised as a political prisoner by the Secretary General's independent experts and released from prison. Mr Zeynalov was released on 15 December 2007.