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(Final version)

Reported cases of political prisoners in Azerbaijan

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A. Draft Resolution

1. The issue of reported cases of political prisoners in Azerbaijan has been of acute concern to the Council of Europe since before the country acceded to the Organisation. Opinion 222 (2000) called on Azerbaijan “to release or to grant a new trial to those prisoners who are regarded as ‘political prisoners’ by human rights protection organisations”. The then Secretary General of the Council of Europe, following a decision of the Committee of Ministers, appointed three independent experts to examine cases. These concerns persisted during the years that followed. Resolution 1272 (2002) called on Azerbaijan “to show a stronger political will to solve the problem in its entirety”; in Resolution 1359 (2004), the Assembly urged Azerbaijan “to find a lasting solution to this problem”; and Resolution 1457 (2005), the Assembly “firmly [condemned] the serious dysfunctions of the Azerbaijani judicial system”, noting that “the Azerbaijani authorities have continued to arrest and convict hundreds of persons for clearly political reasons”. The Assembly has continued to express concern in recent years, as shown by Resolution 2184 (2017) and Resolution 2185 (2017), in which it called on Azerbaijan to “release human rights defenders, journalists and civic and political activists who were imprisoned on politically motivated grounds”.
2. In recent years, the European Court of Human Rights (the Court) has issued a very large number of judgments finding violations of the European Convention on Human Rights (the Convention) arising from arbitrary arrest and detention of opposition politicians, civil society activists, human rights defenders and critical journalists, often combined with violations of their freedoms of expression or assembly. Six of these judgments, in a total of nine cases, exceptionally found violations also of Article 18 of the Convention based on the authorities’ misuse of criminal law provisions on arrest and detention for purposes not permitted under the Convention. In one of these six judgments, the Court stated that there was a “troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law”. The Court therefore called on Azerbaijan to implement general measures focusing, “as a matter of priority, on the protection of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention. The measures to be taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non-repetition of similar practices in the future.”
3. Many of the judgments of the Court finding arbitrary arrest and detention in Azerbaijan concern administrative detention. These judgments stated that the unfounded arrest and detention of the applicants, without proper judicial scrutiny, would have discouraged them from participating in political rallies and could deter other opposition supporters and the public at large from attending demonstrations and participating in open

political debate, in violation of the freedom of assembly. In its supervision of implementation of these judgments, the Committee of Ministers has referred to "the structural problems revealed by the present group of cases".

4. The judgments of the Court finding a violation of Article 18, and those in very many other judgments finding arbitrary detention, establish facts that clearly satisfy the Assembly's definition of 'political prisoner', as set out in its Resolution 1900 (2012). The Court's mention of a number of further pending cases raising similar issues, its description of a "troubling pattern", and its call for general measures to address the causes, along with the Committee of Ministers' reference to "structural problems" underlying misuse of administrative detention, show that fundamental reforms are necessary if Azerbaijan is to fulfil its obligations under the Convention.

5. In the first case in which it found a violation of Article 18, the Court has also issued a ruling under Article 46(4) of the Convention that Azerbaijan had refused to abide by its earlier judgment. The Assembly is concerned that five and a half years after the original judgment, and over two years since the Article 46(4) ruling, important individual measures have still not been taken to restore fully the situation of the applicant, Mr Ilgar Mammadov. This is true also for two other applicants in cases in which the Court found violations of Article 18, Mr Anar Mammadli and Mr Rasul Jafarov.

6. The Assembly also notes the various lists of reported political prisoners that have been maintained by national and international civil society organisations. It considers that the Court's numerous judgments, and in particular its finding of a "troubling pattern", confirm the credibility of the most extensive, detailed and regularly updated lists. It concludes that persons featuring on these lists can be presumed to be political prisoners whose detention violates their human rights and who should therefore be released. It acknowledges that this presumption is rebuttable, but only after careful review of the cases by an independent and impartial body. By accepting this approach, the Azerbaijani authorities would demonstrate their willingness to resolve individual cases without the need for intervention by the Court. This would, furthermore, be in accordance with the principle of subsidiarity underpinning the protection system of the Convention.

Amendment 7

Tabled by Mr Samad SEYIDOV, Mr Sabir HAJIYEV, Ms Sahiba GAFAROVA, Mr Rafael HUSEYNOV, Mr Nagif HAMZAYEV, Ms Sevinj FATALIYEVA, Mr Asim MOLLAZADA

In the draft resolution, paragraph 4, replace the words: "establish facts that clearly satisfy the Assembly's definition of 'political prisoner', as set out in its Resolution 1900 (2012). The Court's mention of a number of further pending cases raising similar issues" with the words: "in particular".

Amendment 5

Tabled by Ms Margreet De BOER, Mr Stefan SCHENNACH, Mr Fourat BEN CHIKHA, Mr Simon MOUTQUIN, Mr Domagoj HAJDUKOVIĆ

In the draft resolution, paragraph 5, second sentence, replace the words: "over two years" with the following words: "eight months".

Amendment 6

Tabled by Ms Margreet De BOER, Mr Stefan SCHENNACH, Mr Fourat BEN CHIKHA, Mr Simon MOUTQUIN, Mr Domagoj HAJDUKOVIĆ

In the draft resolution, paragraph 5, replace the last sentence with the following sentence: "This is true also for the other applicants in cases in which the Court found violations of Article 18."

Amendment 1

Tabled by Mr Stefan SCHENNACH, Mr Constantinos EFSTATHIOU, Mr Kimmo KILJUNEN, Mr Liviu VOVC, Mr Maurizio BUCCARELLA, Mr Tiny KOX, Mr Roberto RAMPI, Ms Sibel ARSLAN, Mr Andrej HUNKO, Ms Ria OOMEN-RUIJTEN

In the draft resolution, after paragraph 6, insert the following paragraph:

"The Assembly notes that family members of political prisoners are often subjected to undue pressures and even to physical attacks by the government authorities. It regrets that Frangiz Huseynova - mother of Mehman Huseynov, former political prisoner, and Emin Huseynov, founder of Institute for Reporters' Freedom and Safety - died in mysterious circumstances in a hospital; calls upon Azerbaijani authorities to fully investigate the death of Frangiz Huseynova; urges the Azerbaijani Government to stop the

use of deprivation of citizenship to silence human rights defenders, like Emin Huseynov, who exposed cases of politically motivated prosecution."

Amendment 2

Tabled by Mr Constantinou EFSTATHIOU, Mr Stefan SCHENNACH, Mr Kimmo KILJUNEN, Mr Liviu VOVC, Mr Maurizio BUCCARELLA, Mr Tiny KOX, Mr Roberto RAMPI, Ms Sibel ARSLAN, Mr Andrej HUNKO

In the draft resolution, after paragraph 6, insert the following paragraph:

"The Assembly joins the appeal of Azerbaijani human rights defenders on the need to investigate the death in a detention facility of blogger Mehman Galandarov in 2017, of prominent activist Faina Kungurova in 2007 and journalist Novruzali Mammadov in 2009; is concerned with the circumstances of the attempt on the life of prominent human rights defender Ogtay Gulaliyev in 2019."

7. The Assembly recalls the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) showing that detainees, including political prisoners, are at risk of inadequate conditions and serious ill-treatment in Azerbaijani police stations, pre-trial detention centres and prisons. It underlines that the exercise of the fundamental freedoms of expression, assembly and association should not depend on whether one is brave enough to face such risks.
8. The Assembly notes the repeated use of presidential pardons to release convicted prisoners, including many who were reported to be political prisoners. Whilst the release of wrongly imprisoned people is always welcome, presidential pardons, which are often conditional on an apology, do not fully erase the effects of injustice and their extensive use casts doubt on the proper functioning of the criminal justice system. They are no substitute for an independent judiciary that prevents unjust and politically motivated detention in the first place.
9. The Assembly welcomes the steps taken by the Azerbaijani authorities in recent years to reform the penitentiary, criminal justice and judicial systems, including the Executive Order of 2017 and the Presidential Decree of 2019. It welcomes, for example, the measures taken to increase judicial independence and the reform of the Law on the Prosecutor's Office to remove the reference to its "oversight" by the President. It welcomes the decrease in the number of people who are arrested or in custody and the judges' increasing willingness to decline prosecution requests for pre-trial detention orders. It is yet to be convinced, however, that the measures taken thus far will suffice to achieve the specific results required by the Court. It will therefore continue to follow

developments closely and looks forward to co-operating with the Azerbaijani authorities in this respect.

10. When Azerbaijan joined the Council of Europe, it recognised the existence of political prisoners and co-operated on measures to release them. Since then, its position has shifted to one of denial. With the numerous recent Court judgments, in particular those finding violations of Article 18, that position is no longer tenable. There can no longer be any doubt that Azerbaijan has a problem of political prisoners and that this problem is due to structural and systemic causes. Recent reforms are welcome, but much more remains to be done if the problem is to be fully and durably resolved.
11. The Assembly therefore calls on:
 - 11.1. The Azerbaijani parliament and its members and the Azerbaijani government to recognise formally all of the findings of the European Court of Human Rights in its judgments establishing a violation of Article 18 of the Convention, including the existence of the “troubling pattern”, as a necessary precondition for the success of the measures required to implement those judgments fully and effectively;
 - 11.2. The members of the Azerbaijani delegation to the Parliamentary Assembly and their colleagues in the Azerbaijani parliament to use their legislative and executive oversight roles to ensure that all necessary measures are taken to implement fully and effectively the Court’s judgments and prevent further recurrence of politically motivated arbitrary detention;
 - 11.3. The Azerbaijani delegation to the Parliamentary Assembly to co-operate with the rapporteur in the course of her work on follow-up to the present resolution, in accordance with Rule 50(1) of the Rules of Procedure, including by providing information on the activities of the Azerbaijani parliament and other authorities to implement this resolution;
 - 11.4. The Azerbaijani government to:
 - 11.4.1. Subject the cases of persons on the most extensive, detailed and regularly updated lists of alleged political prisoners to review by an independent and impartial body and to release those found to be political prisoners in accordance with the definition set out in Resolution 1900 (2012);
 - 11.4.2. Take a holistic approach, addressing problems relating to the judiciary, the Prosecutor General’s office, the police, the detention system and administrative detention together in a coherent and co-ordinated way, so as to ensure the non-repetition of politically motivated arbitrary

Amendment 8

Tabled by Mr Samad SEYIDOV, Mr Sabir HAJIYEV, Ms Sahiba GAFAROVA, Mr Rafael HUSEYNOV, Mr Nagif HAMZAYEV, Ms Sevinj FATALIYEVA, Mr Asim MOLLAZADA

In the draft resolution, replace paragraph 10 with the following paragraph:

"When Azerbaijan joined the Council of Europe, though it did not recognise the existence of political prisoners, yet, it co-operated on measures to release them. With the six recent Court judgments, finding violations of Article 18, there can no longer be any doubt that Azerbaijan has problems due to structural and systemic causes. Recent reforms are welcome, but much more remains to be done if these problems are to be fully and durably resolved."

detention, as required by the European Court of Human Rights;

- 11.4.3. Take promptly every possible step towards full implementation of the judgments of the European Court of Human Rights, so as to ensure, amongst other things, that Mr Ilgar Mammadov and Mr Anar Mammadli may stand as candidates in the forthcoming parliamentary elections and that Mr Rasul Jafarov can resume his professional activities as a lawyer;
- 11.4.4. Co-operate fully with the Committee of Ministers in its supervision of the implementation of judgments of the European Court of Human Rights, especially under its enhanced procedure, including by promptly submitting detailed and comprehensive action plans setting out the measures to be taken and by providing full and up-to-date information in good time before relevant meetings of the Committee of Ministers.
12. The Assembly encourages the co-rapporteurs on Azerbaijan of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe and the rapporteur on implementation of judgments of the European Court of Human Rights of the Committee on Legal Affairs and Human Rights to take account of the present resolution in their work.

Amendment 3

Tabled by Mr Stefan SCHENNACH, Ms Sibel ARSLAN, Mr Tiny KOX, Ms Ria OOMEN-RUIJTEN, Mr Andrej HUNKO

In the draft resolution, paragraphe 11.4.3, delete the words: "the forthcoming parliamentary".

B. Draft Recommendation

1. Referring to its Resolution ... (2019) on "Reported cases of political prisoners in Azerbaijan", the Parliamentary Assembly:
 - 1.1. Recalls the judgments of the European Court of Human Rights against Azerbaijan in which it found violations of Article 18 of the European Convention on Human Rights;
 - 1.2. Welcomes the Committee of Ministers' decision to supervise implementation of these judgments, as well as the Gafgaz Mammadov group of judgments concerning administrative detention, under its enhanced procedure; welcomes its close attention to both individual measures and the general measures required to resolve the structural and systemic problems that those judgments reveal;
 - 1.3. Encourages the Committee of Ministers to ensure that the measures to be taken to implement the judgments in the Article 18 cases will allow for the applicants to stand as candidates in the forthcoming parliamentary elections, whenever they take place.

Amendment 4

Tabled by Mr Stefan SCHENNACH, Ms Sibel ARSLAN, Mr Tiny KOX, Ms Ria OOMEN-RUIJTEN, Mr Andrej HUNKO

In the draft recommendation, paragraphe 1.3, delete the words: "the forthcoming parliamentary".