

# REPORT FROM THE TRIAL MONITORING PROJECT IN AZERBAIJAN 2003-2004



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Office in Baku

The ODIHR and the OSCE Office in Baku are grateful to the Government of Azerbaijan for its co-operation during implementation of the Trial Monitoring Project in 2003-2004.



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## EXECUTIVE SUMMARY

In order to enhance implementation of human rights and the rule of law, OSCE participating States have committed themselves to open their trials to international observers. On this basis, the first phase of a Trial Monitoring Programme for Azerbaijan was implemented jointly by the OSCE/ODIHR and the OSCE Office in Baku between November 2003 and November 2004.

The programme served also as a follow up activity to the presidential election of October 2003. That election sparked violent clashes in Baku between groups of demonstrators protesting election fraud and security forces. The violence led to some 600 detentions. Eventually, 125 persons were brought to trial on criminal charges in connection with the violence, including many prominent leaders of opposition political parties. All of the trials were observed under the programme, to assess their compliance with national law and international obligations.

Azerbaijan's legislative framework includes the rights and protections required for the conduct of fair trials in compliance with international standards. However, the actual legal proceedings in these cases were not always conducted in a manner that would guarantee the implementation of these rights. In addition, observers assessed that law enforcement officials sometimes used excessive force in making arrests and that the rights of persons in detention were not adequately protected.

Of particular, deep concern were extensive, credible allegations of torture and ill-treatment of detainees, the absence of adequate judicial action or remedies in the face of these serious allegations, and the acceptance by the courts of evidence said to have been derived through torture and coercion.

Some of the trials fell well short of OSCE and other international standards in regard to important rights and safeguards, including the right to legal counsel, the right to an impartial and independent tribunal, the right to a fair hearing and the right to a reasoned judgment.

The appropriate authorities should take prompt remedial action in light of these shortcomings. Persons who have been convicted or sentenced in trials that were unfair or that fell substantially short of Azerbaijan's international obligations should have their convictions cancelled or commuted, and should be retried or released from custody.

The authorities should undertake a prompt, serious, wide-ranging and independent investigation of all allegations of torture and mistreatment, as well as an investigation of the use of excessive use of force by security forces on 15 and 16 October 2003, and during the subsequent detentions of suspects.

Since many of the cases in question are still under appeal, there remains an opportunity for the appellate courts to remedy the deficiencies of the trials.

# INTRODUCTION

The right to a fair and public trial by an independent and impartial tribunal is enshrined in the Universal Declaration of Human Rights (UDHR), as well as in binding instruments of the United Nations and the Council of Europe. The OSCE recognized this right from its earliest days, when the Helsinki Final Act committed signatory States to act in conformity with the UDHR. OSCE commitments on the right to a fair trial and related issues were elaborated, expanded and reaffirmed in many subsequent OSCE documents. In 1990, OSCE participating States committed themselves to accept court observers from other participating States and non-government organizations as a confidence building measure and in order to ensure greater transparency in the implementation of their commitments to fair judicial proceedings.<sup>1</sup> The OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) launched its Trial Monitoring Programme in furtherance of these commitments.

In the direct aftermath of the flawed Presidential Election of 15 October 2003, violent clashes took place between government forces and demonstrators. The trials of all persons charged with criminal offences in connection with these violent clashes were monitored under the OSCE Trial Monitoring Programme. The trials were monitored from the perspective of their compliance with national and international law and obligations regarding the right to a fair trial.

**Part One** of this report provides background information on the OSCE Trial Monitoring Programme and the election-related cases. In addition, it sets out the aims and methodology of the report.

**Part Two** of this report provides basic information on the cases, together with the findings and analysis of the monitoring. Each section sets out the relevant national and international law provisions relating to fair trial standards and obligations. The findings have been structured in accordance with the distinct yet inter-related rights that make up the right to a fair trial, from the initial point of detention through the appeal stage of the case.

**Part Three** of this report contains conclusions and recommendations for the government of Azerbaijan.

The **Annexes** provide additional details and background.

The OSCE/ODIHR and the OSCE Office in Baku express their appreciation to the authorities of Azerbaijan for enabling this trial monitoring programme to go forward. They remain ready to work with the government authorities and civil society of Azerbaijan to strengthen the rule of law and administration of justice.

<sup>1</sup> Paragraph 12, Copenhagen Document 1990. See Annex 3.

# PART I

## 1. OSCE TRIAL MONITORING PROGRAMME

In recognition of the fundamental nature of the right to a fair trial, OSCE participating States have committed themselves to allow national and international observers to monitor trials. It is on the basis of this commitment that the Trial Monitoring Programme for Azerbaijan was implemented jointly by the OSCE/ODIHR and the OSCE Office in Baku.

The overall goal of the Trial Monitoring Programme is to enhance respect for the right to a fair trial. In this regard, the objectives of the Trial Monitoring Programme are three-fold:

- To improve and build confidence in the administration of justice and the independence and integrity of the judiciary;
- To build the capacity of national monitors to monitor and report accurately on the compliance of trials with national and international fair trial standards. To this end, monitors receive regular training and feedback on national and international fair trial standards and trial monitoring and reporting techniques;
- To disseminate systematic and good quality reports on compliance with national and international standards and appropriate recommendations on the right to a fair trial. The dissemination of information of this nature contributes to transparency and helps identify areas where legal and institutional reform would be appropriate.

This report is the culmination of the first phase of the Trial Monitoring Programme, which was implemented between November 2003 and November 2004 in Baku. During the first phase, the OSCE trained 21 trial monitors and co-ordinated their subsequent trial monitoring and reporting of the post-election cases. In addition, an international expert observed the final set of trials, which began on 7 May.<sup>2</sup>

## 2. SUMMARY OF POST-ELECTION DEVELOPMENTS

### Post-election violence

The Presidential Election of 15 October 2003 was monitored by the OSCE/ODIHR, which published its final election report on 12 November 2003.<sup>3</sup> Ilham Aliyev, son of the outgoing president, Heydar Aliyev, was declared the winner of the election and President of the Republic of Azerbaijan. In the immediate aftermath of the elections, demonstrations took place on 15 and 16 October, which resulted in violent clashes between security forces and demonstrators in Baku.

On the evening of 15 October in front of the Musavat Party Headquarters, members of the OSCE/ODIHR Election Observation Mission witnessed police attacking peaceful pro-opposition supporters. On 16 October, several thousand demonstrators and pro-opposition supporters gathered in Azadlig Square in the centre of Baku to protest what they considered to have been a stolen election.

<sup>2</sup> Paul Garlick, Queens Counsel, Judge, United Kingdom; see Chapter 3, Aim and Methodology.

<sup>3</sup> Republic of Azerbaijan Presidential Elections 15 October 2003, Final Report, OSCE/ODIHR, <http://www.osce.org/odihr/index.php?page=elections&div=reports&country=az>. The description of events in this section is taken from Section XIII of the Final Report.



On their way to the square demonstrators were witnessed vandalizing buildings and vehicles, and attacking police forces with metal bars and stones. At the square, demonstrators were rapidly surrounded by police and security forces, which used overwhelming force to disperse the crowd. Security forces were witnessed beating demonstrators with truncheons after they had been detained and no longer posed any danger or as they were fleeing the area. Video tape recordings provide evidence of the scale of excessive force and brutality used by government forces to overwhelm the demonstrators.

The violence was followed by a wave of detentions. According to officials, the detainees were persons involved in the violent activities or responsible for organizing the violence. However, the detentions took place in all parts of the country and included many individuals with no clear connection to the violence. The Minister of Interior reported that over 600 persons were detained following the violent clashes. The OSCE/ODIHR voiced particular concern about dozens of apparently unrelated detentions of election officials who had refused to certify the results of their polling stations or districts due to concern about fraud on the election day.

### **Administrative and criminal charges**

The majority of the people detained in connection with the elections were later released without charge. In total, 129 persons were charged with criminal offences in connection with the post-election clashes, of whom 125 had been brought to trial at the time this report was prepared.

They were charged with:

- Organizing or participating in mass disturbances;
- Resistance to or acts of violence against a state agent;
- Organizing or actively participating in actions causing a breach of public order.<sup>4</sup>

Following the events of 15 and 16 October, at least 27 of those that were later charged with criminal offences were initially convicted of the administrative offence of "Disobedience to a State Official" and sentenced to administrative detention of up to 15 days.<sup>5</sup> The administrative convictions were subsequently reversed by the Court of Appeal. However, these individuals were charged with criminal offences once the Court of Appeal had overturned their administrative convictions.

Among the people charged with criminal offences were several prominent members of the opposition including,

- Igbal Agazade, Member of Parliament and Chairman of the Umid Party;<sup>6</sup>
- Rauf Arifoglu, Deputy Chairman of the Musavat Party and Editor-in-Chief of *Yeni Musavat* newspaper;
- Etimad Asadov, Chairman of the Society of Karabakh War Invalids;
- Arif Hajili, Deputy Chairman of the Musavat Party;
- Panah Huseynov, former Prime Minister of Azerbaijan and Chairman of the Peoples Party;
- Ibrahim Ibrahimli, Deputy Chairman of the Musavat Party;
- Sardar Jalolovlu, former Executive Secretary of the Azerbaijan Democratic Party.<sup>7</sup>

<sup>4</sup> The texts of the specific, relevant provisions of the criminal code can be found in Annex 2.

<sup>5</sup> Article 310 of the Administrative Code. The full text of the administrative and criminal articles can be found in Annex 2.

<sup>6</sup> On 17 October 2003 the Milli Majlis (Parliament of the Republic of Azerbaijan) revoked Igbal Agazade's parliamentary immunity.

<sup>7</sup> At the time of his arrest Sardar Jalolovlu was the Executive Secretary of the Azerbaijan Democratic Party.

In addition, Ilgar Allahverdiyev, Secretary General of the Azerbaijan Chapter of Religious Liberty Association and the former Imam of Juma Mosque was also charged with criminal offences in connection with the post-election violence.

At the time of the writing of this report, the OSCE/ODIHR was unaware of any cases of charges having been brought against police officers or other officials for brutality or excessive use of force against demonstrators.

## **Response of the international community**

In resolution 1358(2004), the Parliamentary Assembly of the Council of Europe (PACE) made the following recommendation to the authorities:<sup>8</sup>

- To release or speedily bring to trial supporters and leaders of opposition political parties detained in the post-election period. All detainees must be granted access to their lawyers and be afforded the right to a fair trial. The presumption of innocence must be respected and the sentences imposed should be proportionate. The authorities must take all necessary measures to make sure that none of the cases under investigation result in new cases of political prisoners.

In its final election report, the OSCE/ODIHR made the following recommendations to the authorities:

- Supporters, members and leaders of opposition political parties detained in the post-election period should be released or promptly brought to trial. National leaders of opposition parties who are not personally and directly responsible for criminal violations should be immediately released.
- All accused must be afforded the right to an expeditious, fair and open trial, and to be represented by a lawyer of their choice; due process also requires that defendants be provided sufficient time to prepare a defence. Any sentences should be proportionate to crimes committed. There should be no further forced confessions. The authorities should ensure that torture is not used to obtain confessions and that any confessions obtained under duress are not admitted as evidence.
- Any law enforcement officials responsible for using excessive force in the pre-election and immediate post-election period should be held legally accountable.

## **3. AIM AND METHODOLOGY**

The cases of all 125 persons tried in connection with the post-election violence were monitored under the OSCE Trial Monitoring Programme. The aims were those set out in Chapter 1 of this report, as well as to monitor the implementation of the recommendations made in the OSCE/ODIHR Final Report on the Presidential Election.

The right to a fair trial is made up of a number of distinct yet inter-related rights that encompass the initial point of detention [RTF bookmark start: }intr, the pre-trial period, the trial and the appeal stage. [RTF bookmark end: }intr On this basis, the cases were monitored from the perspective of their compliance with the standards and obligations set out in the following instruments and documents:

<sup>8</sup> [http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1358.htm#\\_ftn](http://assembly.coe.int/Documents/AdoptedText/ta04/ERES1358.htm#_ftn).

## National Law

- The Constitution of the Republic of Azerbaijan (1995)
- Criminal Procedure Code of the Republic of Azerbaijan (2000) (CPC)
- Law on Police (1999)

## Regional Obligations and Commitments

- OSCE Commitments<sup>9</sup>
- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>10</sup>
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT)<sup>11</sup>

## United Nations Obligations and Standards

- International Covenant on Civil and Political Rights (ICCPR)<sup>12</sup>
- United Nations Convention Against Torture (CAT)<sup>13</sup>
- Code of Conduct for Law Enforcement Officials<sup>14</sup>
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>15</sup>
- Standard Minimum Rules for the Treatment of Prisoners<sup>16</sup>
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>17</sup>

In respect of each case that was monitored, a trial report form was completed that covered compliance with national, regional and international standards from the initial point of detention to the completion of the first instance trial.

OSCE-trained trial monitors observed all first instance hearings and two appeals. The OSCE-trained trial monitors participated in two training sessions on national and international fair trial standards and trial monitoring techniques in December 2003 and May 2004. In addition, an international expert, Paul Garlick, Queen's Counsel, Judge (United Kingdom), observed the final set of trials, which began on 7 May. The information contained in this report stems mainly from the direct observations of the trial monitors and the international expert. However, the information on arrest and the pre-trial period is based upon submissions made in court by the defendants and defence counsel and interviews with defendants and defence counsel.<sup>18</sup> In the case of Trial Group 15, a detailed questionnaire was prepared by the international expert and completed by defence counsel.<sup>19</sup>

<sup>9</sup> In particular, the OSCE commitments on the Prohibition of Torture, Freedom from Arbitrary Arrest or Detention, Right to a Fair Trial and Independence of the Judiciary. The OSCE commitments, which have been adopted by all 55 OSCE participating States are of a politically binding nature. For the full text of the OSCE commitments see, OSCE Human Dimension Commitments, A Reference Guide, Warsaw, 2001. [http://www.osce.org/odihr/?page=publications&div=intro&subdiv=osce\\_hdc](http://www.osce.org/odihr/?page=publications&div=intro&subdiv=osce_hdc)

<sup>10</sup> In particular, Article 3 on the Prohibition of Torture, Article 5 on the Right to Liberty and Article 6 on the Right to a Fair Trial. Azerbaijan ratified the ECHR on 15 April 2002.

<sup>11</sup> Azerbaijan ratified the ECPT and its Protocols 1 and 2 on 15 April 2002.

<sup>12</sup> In particular Article 3 on the Prohibition of Torture, Article 5 on the Right to Liberty and Article 6 on the Right to a Fair Trial. Azerbaijan acceded to the ICCPR on 13 August 1992.

<sup>13</sup> Azerbaijan acceded to the CAT on 16 August 1996.

<sup>14</sup> Adopted by General Assembly resolution 34/169, 17 December 1979.

<sup>15</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>16</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 1955. Approved by Economic and Social Council resolution 663 C (XXIV), 31 July 1957 and 2076 (LXII), 13 May 1977.

<sup>17</sup> Adopted by General Assembly resolution 43/173, 9 December 1988.

<sup>18</sup> For the purposes of this report, the term 'defendant' is used to refer both to the 'suspect', the 'accused' and the convicted.

<sup>19</sup> A compilation of completed questionnaires from Trial Group 15 can be found in Annex 4 to this report.

## PART II

### 4. BASIC INFORMATION ON THE POST-ELECTION CASES

Of the 129 people charged with criminal offences, 125 had been brought to trial at the time this report was prepared. A list of all those brought to trial can be found in Annex 1. In addition, the charges against two persons<sup>20</sup> were dropped and the investigations in the cases of two others were still ongoing.<sup>21</sup>

The cases of the 125 persons that were brought to trial were heard in 15 groups. For the purpose of this report they are referred to as Trial Groups 1-15. The name of the Presiding Judge in each Trial Group can be found in Annex 1.

#### **Trials concerning the events of 15 October**

The trials in Trial Group 7 concerned the events that took place in front of the Musavat Party Headquarters on 15 October. This Trial Group was tried before the Sabayil District Court. The defendants were charged with organization of, or active participation in, actions causing a breach of public order and resistance to, or acts of violence against, a State Agent.<sup>22</sup>

#### **Trials concerning the events of 16 October**

The trials in the other Trial Groups all concerned the events that took place on Azadlig Square on 16 October and were all tried before the Court for Serious Crimes. The defendants in Trial Groups 1-6 and 8-14 were charged with participating in mass disturbances, organization of, or active participation in, actions causing a breach of public order and resistance to, or acts of violence against, a State Agent.<sup>23</sup>

The defendants in the final Trial Group, Trial Group 15, included the most prominent members of the opposition parties who were tried in connection with the post-election violence. Whereas the defendants in all the other Trial Groups were charged with participating in mass disturbances, the defendants in Trial Group 15 were charged with organizing mass disturbances. In addition, they were also charged with resistance to, or acts of violence against, a State Agent.

#### **Sentences and Verdicts**

All 125 defendants were found guilty. Forty were sentenced to periods of imprisonment of from two to six years; 81 were sentenced to suspended periods of imprisonment from two to five years; and four defendants were sentenced to limitation of liberty for a period of three years.

Of the 125 defendants, 61 appealed their convictions and 47 did not. In 17 cases we have no information as to whether there was an appeal.

<sup>20</sup> Gulhuseyn Abbasov and Mammadov Agamexti.

<sup>21</sup> Sulhaddin Akbar and Mammedov Seyidali Mirsaleh.

<sup>22</sup> Article 233 and Article 315 of the Criminal Code.

<sup>23</sup> Article 220, Article 233 and Article 315 of the Criminal Code.

Of the 40 defendants that received prison sentences, all appealed. On appeal, seven received a reduction in their sentences. All 40 defendants who received prison sentences applied to the Supreme Court. As of the time this report was prepared, none of the cases had been considered.

## 5. FINDINGS AND ANALYSIS

### **A. USE OF FORCE DURING ARREST AND DETENTION<sup>24</sup>**

The UN Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and only to the extent required for the performance of their duties.<sup>25</sup> Accordingly, when carrying out an arrest, the amount of force used must not go beyond that which is reasonably necessary to carry out the arrest.<sup>26</sup> The national Law on Police of 1999 provides that a police officer may use force only in circumstances of extreme necessity or necessary defence, and where all other means prove unsuccessful.<sup>27</sup> Furthermore, the Law on Police provides that the use of force must be proportional to any danger present.<sup>28</sup>

In regard to the post-election violence in Baku on 15 and 16 October in Baku, members of the OSCE/ODIHR Election Observation Mission and OSCE Office in Baku independently witnessed security forces both in front of Musavat Headquarters and on Azadlig Square beating demonstrators with truncheons after they had been detained and no longer posed any threat.

The use of excessive force was not limited to arrests carried out during the violent clashes on 15 and 16 October. For example, in trial group 15, Ilgbal Fehruz Agazade<sup>29</sup> was arrested at his home by members of the Head Department for the Fight Against Organized Crime on 17 October. In a written statement, the defendant described being beaten with a truncheon and automatic firearms on his head, neck, back and legs in his yard and then being dragged to a car with his hands tied behind his back. He further states that he was continually insulted, beaten and kicked in the head, face, abdomen and chest during the car journey to the Head Department for the Fight Against Organized Crime. The Head Department for the Fight Against Organized Crime, which is headed by Vilayet Eyvazov, is a department of the Ministry of Interior.

### **B. RIGHT OF PEOPLE IN CUSTODY TO INFORMATION**

The ECHR and OSCE commitments provide that everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against them.<sup>30</sup> The information given regarding the reasons for the arrest do not need to be particularly detailed but must cover the essential legal and factual reasons for the arrest, while the information regarding any criminal charges must be more specific. The right of people in custody to information of this nature is essential to ensure they can challenge the lawfulness of their detention and, if they are charged, to start the preparation of their defence.

<sup>24</sup> This section is concerned with the use of force during arrest. For further information on the use of force during detention, see later sections of this report. Throughout the text the word 'arrest' refers also to detention and is not limited to the legal definition of 'arrest' under Azerbaijani law.

<sup>25</sup> Article 3 of the Code of Conduct for Law Enforcement Officials. See also OSCE Moscow Document (1991), paragraph 21.1.

<sup>26</sup> Commentary on Article 3 of the Code of Conduct for Law Enforcement Officials, [http://www.unhcr.ch/html/menu3/b/h\\_comp42.htm](http://www.unhcr.ch/html/menu3/b/h_comp42.htm).

<sup>27</sup> Article 27 of the Law on Police.

<sup>28</sup> Article 26 of the Law on Police.

<sup>29</sup> Member of Parliament, Chairman of the Umid Party.

<sup>30</sup> Article 5(2) of the ECHR; OSCE Moscow Document (1991) paragraph 23.1(ii).

Azerbaijani national law is in full accordance with international standards in this respect. The Criminal Procedure Code provides that everybody must be immediately informed of the reasons for their arrest and any charges against them.<sup>31</sup> However, it appears that this right was not applied in all cases. For example, in Trial Group 15, Sardar Jalaloglu and Natic Jabiev<sup>32</sup> said they were arrested in a private home by men dressed in black and wearing hoods. The men broke a window and entered the house and then forced them to the ground, struck and handcuffed them and then dragged them to a car. The men did not give them any explanation of, or reason for, their actions at any point.

The Criminal Procedure Code also provides that everybody should, from the outset of detention, be given oral and written notification of their right to legal counsel and their right not to testify against themselves.<sup>33</sup> This notification, which should be provided by the person who carried out the arrest, the investigator or the prosecutor, is essential to ensure that detainees can avail themselves of their fundamental rights. However, this right was not uniformly implemented. For example, in respect of Trial Group 15, it appears that none of the defendants were given written notification of these rights at the outset of their detention.

### **C. RIGHT TO LEGAL COUNSEL BEFORE TRIAL**

#### **Right to choose a lawyer**

According to the ECHR and OSCE commitments, everyone charged with a criminal offence has the right to defend himself in person or through legal assistance of his own choosing.<sup>34</sup> This provision also exists in the Criminal Procedure Code.<sup>35</sup> Under the Criminal Procedure Code, if a detainee does not have a lawyer, the prosecuting authority must present the detainee with a list of lawyers, contact the chosen lawyer and create an opportunity for the detainee to meet him.<sup>36</sup>

However, it appears that this right was not uniformly complied with. For example, in Trial Group 11, an investigator introduced a lawyer to defendant Abdullayev Elxan Savalan on 21 October 2003 and proposed that he enter into a contract with the lawyer. The defendant was not provided with a list of lawyers and was not informed of his right to choose a lawyer from a list.

In Trial Group 14, defendant Sadig Ismaylov was first formally assigned a state-appointed lawyer who was present during interrogation and was only later given the opportunity to contract a lawyer of his own choice.

A further limitation on the right to choose freely legal representation in criminal cases is the small number of lawyers that are entitled to represent clients in Azerbaijan. At present, only members of the Collegium of Advocates may represent clients in criminal cases. The old Collegium had 370 members. No new members were admitted to the Collegium between 1999 and 2004. Only recently, following the coming into force of amendments to the Law on Advocates and Advocates' Activity in August 2004, were 36 new members (licensed lawyers) admitted to the Collegium on the occasion of the recent foundation of the new Bar Association. Unfortunately, it appears that the transitional provisions of amendments to the law on advocates were interpreted in an arbitrary manner by the Organizing

<sup>31</sup> Article 90 and Article 91 of the CPC.

<sup>32</sup> Natic Jabiev was arrested and held at the Department for the Fight Against Organized Crime. He was later released and no criminal charges were brought against him.

<sup>33</sup> Article 90 of the CPC.

<sup>34</sup> Article 6(3)(c) of the ECHR; OSCE Copenhagen Document (1990), paragraph 15.7.

<sup>35</sup> Article 90 and 91 of the CPC.

<sup>36</sup> Article 153 of the CPC.

Committee of the new Collegium (whose members were appointed by the Ministry of Justice).<sup>37</sup> This resulted in the non-inclusion of nearly 220 licensed lawyers to the Bar. There are currently around 400 members of the Collegium and no more than fifty of those regularly handle criminal cases.

## Right to a lawyer in pre-trial stages

The European Court has acknowledged that the right to a fair trial normally requires that the defendant be allowed legal counsel during the initial stages of police investigation. Absence of legal representation at the pre-trial stage can affect the fairness of the proceedings as a whole. The European Court has found that failure to grant access to counsel during the first 48 hours after arrest to be a violation of Article 6 of the European Convention.<sup>38</sup> In line with the European Convention, the Criminal Procedure Code provides that the prosecuting body is required to guarantee the presence of a lawyer immediately after effecting arrest.<sup>39</sup>

However, specific examples exist where defendants claim that they were not provided with access to legal counsel until after having been charged or remanded in custody. In Trial Group 13, only one of nine defendants, Ilgar Ibrahim oglu Allahverdiyev, said he was provided with the opportunity to meet with his lawyer from the moment of detention. In Trial Group 15, defendant Panah Huseynov made a written statement to the effect that he did not have access to his lawyer from his arrest on 18 October 2003 until 23 October 2003. He complained that he had been forced to renounce his right to legal counsel. In this case the defendant stated in court that during his detention in Gazakh Police Division he was forced to sign a paper rejecting the services of a lawyer and a paper confessing that he had used force against police officers.

In respect of Trial Group 15, whilst it appears that some defendants did have access to legal representation within a short period of time after being taken into custody, in some cases access was denied after the initial meeting. The completed questionnaires included in Annex 5 of this report provide a more detailed account of the difficulties that defence advocates had in gaining access to their clients. The table below summarizes the information given in the questionnaires in relation to access to legal representation.

Defendant	Date of first detention (2003)	Date of first access to legal representation
Rauf Arifoglu	27 October	27 October
Arif Hajili	24 October	27 October
Ibrahim Ibrahimli	17 October	18 October
Panah Huseynov	18 October	23 October
Etimad Asadov	17 October	26 October
Sardar Jalologlu	18 October	18 October
Igbal Agazade	17 October	23 October

<sup>37</sup> The relevant transitional provision of the recent amendments to the law on advocates provided that those lawyers who already have a license should be admitted to the new bar. While there are approximately 260 licensed lawyers, only 36 of them were admitted to the new bar. In a press release, the OSCE Office in Baku expressed its concern about the inaugural meeting of the Azerbaijan Bar Association, pointing out that the foundation meeting of this institution did not acknowledge the right to membership of many licensed lawyers.

A conference sponsored and organized by the OSCE, the United States Embassy and the American Bar Association Central European and Eurasian Law Initiative (ABA-CEELI) was held in Baku on June 23 and 24. The conference focused on the possible methods of implementation of the recent amendments to the Law on Advocates. The recommendations of the conference are set out in Annex 6.

<sup>38</sup> Murray v. United Kingdom (1996).  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Murray%20%7C%20United%20%7C%20Kingdom&sessionid=281511&skin=hudoc-en>

<sup>39</sup> Article 90 and Article 153 of the CPC.



During interrogation, the presence of a lawyer is a key safeguard and the Criminal Procedure Code provides that the investigator must take steps in advance to guarantee the participation of defence counsel.<sup>40</sup>

The following example illustrates a case where the lawyer was either not present at all or only present during part of the interrogations. [RTF bookmark end: }3-6 In Trial Group 5, defendant Oktay Ahmadow told OSCE monitors that he was interrogated twice, first as a witness at Khatai District Police Division on 17 October and two days later at the Head Department for the Fight Against Organized Crime. During the first interrogation, he stated, he was not notified of his right to a lawyer and the investigating officer<sup>41</sup> refused him access to a lawyer.

In addition, numerous defence lawyers stated that they were not notified of the time and date that an identification parade was to be held, and as a result they were not present during this investigative measure. This would amount to a violation of domestic legislation according to which participation of counsel during the conduct of investigative measures is to be guaranteed by the officials in charge of preliminary investigation.<sup>42</sup>

#### ***D. RIGHT TO NOTIFY OTHERS OF ARREST AND DETENTION***<sup>43</sup>

The UN Body of Principles for the protection of all persons under any form of detention, as well as OSCE commitments, provide that anyone who is detained has the right to inform, or have the authorities notify, their relatives immediately after they have been arrested. The notification must include the fact of their arrest and the place of detention.<sup>44</sup>

In line with this, the Criminal Procedure Code provides for the right to inform relatives immediately following arrest.<sup>45</sup> However, this right was not uniformly implemented. For example, in Trial Group 8, two defendants said they had not been allowed to notify their relatives until 10 days after their arrest. In Trial Group 15, defendant Etimad Asadov was arrested on 17 October and his relatives were not informed of his arrest. It seems that it was not until the 26 October that the defendant's legal representatives were allowed to meet with the defendant. There were also delays in informing third parties and legal representatives of the arrest of and place of detention of other defendants in Trial Group 15. Details are set out in Annex 5.

#### ***E. RIGHT TO BE BROUGHT PROMPTLY BEFORE A JUDGE***

The ECHR and OSCE commitments provide that everyone who is arrested on suspicion of having committed a crime must be brought promptly before a judge.<sup>46</sup> The purpose of judicial supervision, which is an important safeguard against arbitrary arrest and detention, is to assess whether there are sufficient legal reasons for the arrest, to assess whether the person should be remanded in pre-trial detention and to safeguard the well being of the detainee. According to the Criminal Procedure Code, persons detained on suspicion of committing a crime must be brought before a court within 48 hours to enable the court to examine the case and decide whether to remand the person in custody.<sup>47</sup>

<sup>40</sup> Article 232 and Article 233 of the CPC.

<sup>42</sup> Article 239 of the CPC.

<sup>43</sup> The OSCE had regular and unhindered access to detainees at Bailov Remand Prison, which is where all the defendants were detained during pre-trial detention.

<sup>44</sup> Principle 16 of the Body of Principles; OSCE Moscow Document, paragraph 23.1(iv).

<sup>45</sup> Article 90 and Article 153 of the CPC.

<sup>46</sup> Article 6(3) of the ECHR; OSCE Copenhagen Document, paragraph 5.15.

<sup>47</sup> Article 15, Article 148 and Article 156 of the CPC.



Almost all of the defendants said that there had been no problems in this regard and that they had been brought before a judge within 48 hours of their arrest.

As mentioned above, one of the purposes of judicial supervision is to assess whether the person should be remanded in pre-trial detention. The ECHR provides that pre-trial detention is acceptable only if there is reasonable suspicion that the person has committed the crime.<sup>48</sup> The term “reasonable” means that the suspicion must be based on objective facts or information that link the person with the crime.<sup>49</sup> The Criminal Procedure Code provides that the decision to remand a person in pre-trial detention can only be made if the person can be linked to the crime.<sup>50</sup>

However, reasonable suspicion alone is not sufficient to justify pre-trial detention. According to the Criminal Procedure Code, a person can only be remanded in pre-trial detention if there are sufficient reasons, that are specific to the particular individual, to believe that the person may flee, interfere with the investigation or trial, commit crimes, create a public threat, fail to comply with a summons without good reason or otherwise evade criminal responsibility or punishment.<sup>51</sup> The Criminal Procedure Code provides that in determining the necessity of pre-trial detention, regard must be had to a number of factors including the gravity, nature and circumstances of the crime and the characteristics of the particular individual including their personality, age, health, occupation, family, financial and social status, whether they have dependants, a permanent address or a criminal record.<sup>52</sup>

Almost all of those charged with criminal offences in connection with the post-election violence were remanded in custody. Ten defence lawyers said that the hearings were extremely short and did not enable a sufficient assessment of whether the defendant should be remanded in custody. Furthermore, a review of six of the decisions that were made on remand indicates that the decisions were made in general terms and not on the basis of specific information about each individual. The court decisions state that the defendant is to be remanded in custody to prevent him from fleeing, interfering with the investigation or trial, committing a crime or failing to comply with a summons, without indicating any reasons specific to the particular individual.

For example, in Trial Group 13, the defence lawyer of Ilgar Ibrahim oglu Allahverdiyev made an application to the court to overturn the decision to remand his client in custody on the basis that his client would not flee or commit any of the other actions listed in the Criminal Procedure Code. To support this application, the defence lawyer pointed out that his client had been abroad twice since the post-election violence and had returned despite indications in the press that he might be arrested. He also noted that his client had a permanent address and had attended the Office of the Prosecutor when requested. However, the court concluded that his client should continue to be remanded in custody as he was “accused of committing serious crimes.”

With regard to Trial Group 15, there is reason to believe that there were no reasonable grounds for remanding any of the defendants in custody. The defendants were all men of good character and standing in the community, and all of them had permanent addresses and family or community links. Moreover, there was no evidence was presented upon which to found a belief that there was a real risk these defendants might flee, interfere with the investigation or trial, commit crimes, create a public threat, fail to comply with a summons, or otherwise evade criminal responsibility or punishment.

<sup>48</sup> Article 6(3) of the ECHR.

<sup>49</sup> Erdagöz v. Turkey (2001) <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Erdagöz%20%7C%20Turkey&sessionid=281511&skin=hudoc-en>

<sup>50</sup> Article 157 of the CPC.

<sup>51</sup> Article 155 of the CPC.

<sup>52</sup> Article 155 of the CPC.

The Criminal Procedure Code states that remand prisoners must be transferred from the temporary place of detention to a remand prison within 24 hours of the court decision to remand them in custody. Accordingly, the maximum period of time to be spent in temporary detention before being transferred to a remand prison is three days.<sup>53</sup> Almost all of the defendants said that this had been complied with, although there were a number of exceptions. For example, Ibrahim Ibrahimov said in a written statement that he was arrested at his home late on the evening on 16 October and was not transferred to a remand prison until seven days later, on 23 October.

## ***F. RIGHT TO ADEQUATE TIME AND FACILITIES TO PREPARE A DEFENCE***

In order to ensure that the right to defence is meaningful, anyone accused of a criminal offence and their lawyer, if any, must have adequate time and facilities to prepare the defence.<sup>54</sup>

The right to adequate time and facilities to prepare the defence is an important aspect of the fundamental principle of “equality of arms,” which requires that the defence and the prosecution must be treated in a manner that ensures both parties have an equal opportunity to prepare and present their case during the course of the proceedings. The right to adequate time and facilities to prepare the defence applies both to the defendant and their lawyer at all stages of the proceedings, including before the trial and during any appeals.

According to the European Court, the time needed to prepare a defence depends on the circumstances of the case, including the complexity and the stage of the proceedings.<sup>55</sup> In particular the defence lawyer must be appointed in sufficient time to allow for proper preparation of the defence.<sup>56</sup> The principle implies that the defendant’s lawyer has unrestricted and confidential access to clients held in pre-trial detention in order to discuss all elements of the case. A system that requires the prior authorization of the judge or procurator for legal visits will violate this presumption. When the prosecutor has the power to authorize visits by the defence counsel, the whole fairness of the trial may be called into question.

Central to the concept of adequate facilities to prepare a defence is the right of the accused, with limited restrictions (any restrictions must be no more than strictly necessary and proportionate to the identified risk), to communicate freely with his lawyer in the preparation of his defence.<sup>57</sup>

Defendants must also have the right of access to evidence for the purposes of exonerating themselves or of obtaining a reduction in sentence. All relevant evidence that has been or could be collected by the competent authorities, or that may assist in defence, should be made available. The right of access to the prosecution file, though not expressly guaranteed by the ECHR, can be inferred from Article 6 3(b).<sup>58</sup>

According to the Criminal Procedure Code, opportunities must be provided for the person, from the moment of arrest, to meet in private and in confidence with his lawyer under decent conditions and “under supervision.”<sup>59</sup> Despite this provision, however, the practice for gaining access to clients in

<sup>53</sup> Article 157 of the CPC.

<sup>54</sup> Article 6(3)(b) of the ECHR.

<sup>55</sup> *Albert and Le Compte v. Belgium and x v. Belgium* (1983) . Also see UN Human Rights Committee General Comment 13, para. 9, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/bb722416a295f264c12563ed0049dfbd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/bb722416a295f264c12563ed0049dfbd?Opendocument)

<sup>56</sup> *X and Y v. Austria*, 15 DR 160.

<sup>57</sup> *Campbell and Fell v. the United Kingdom*, 28 June 1984.

<sup>58</sup> *Jespers v. Belgium*, 27 DR 61.

<sup>59</sup> Articles 91 and 153 of the CPC.

detention is far from straightforward in Azerbaijan. In the pre-trial period, the defence lawyer must obtain a warrant from his law firm stating that he has been contracted or appointed to represent a particular defendant, together with a letter from the investigator/prosecutor, which he must be submitted to the detention facility. Once these steps have been taken, the defence lawyer can theoretically have unlimited access to the client. In practice, this creates obstacles to unimpeded and prompt access. Moreover, the procedure is not governed by the Criminal Procedure Code and indeed has no legal basis, which paves the way for arbitrariness, particularly with regard to delays in the provision of the appropriate letter by the investigator. In Trial Group 9, one lawyer, Mubariz Garayev, told the OSCE observer that after his client was transferred to the isolator, the issuance of a letter of access was delayed for several days. In Trial Group 6, the lawyer of Ehtiram Jalilov said he did not receive the required letter until 20 days after being appointed.

In Trial Group 15, the evidence comprised 22 volumes of criminal case materials, testimonial evidence, data on the cause of damage, testimonies of the victims, and 22 video cassettes. The material was not made available to the defence lawyers until March 2004. Even then, only one copy of the case materials was made available to the defendants, thus restricting the preparation of their defences, particularly during the trial when the defendants were kept apart from each other in separate cells. On numerous occasions during the hearing of Trial Group 15, the defendants complained to the court about the difficulties that they were encountering in preparing cross-examination of witnesses as a result of being in isolation and having to share the single copy of case materials.

In addition to difficulties created by only one copy of the case materials being made available to the defendants, the defence lawyers complained that they had been denied copies of the rulings which the court had made in the preliminary stages of the trial. The defence advocates reported that of 31 motions that had been lodged by the defence, copies of only 8 decisions were provided by the court.

## ***G. FREEDOM FROM TORTURE AND ILL-TREATMENT, AND THE RIGHT NOT TO BE COMPELLED TO TESTIFY OR CONFESS GUILT***

### **The Prohibition of Torture**

National and international standards provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment.<sup>60</sup> This prohibition is absolute; torture or other cruel, inhuman or degrading treatment cannot be justified in any circumstances.

The term “torture” refers to the infliction of severe mental or physical pain that is carried out for a specific purpose by, or with the consent or acquiescence of, state authorities.<sup>61</sup>

The term “cruel, inhuman or degrading treatment” refers to acts carried out by, or with the consent or acquiescence of, the state authorities that cause a lesser degree of suffering than torture.<sup>62</sup> It is a fundamental human right that no one charged with a criminal offence may be compelled to testify or

<sup>60</sup> Article 3 of the ECHR, Article 7 of the ICCPR, OSCE commitments including Vienna Document (1989) paragraph, 23.4, Copenhagen Document (1990) paragraph 16, and Article 15 of the CPC. Torture encompasses both physical and psychological forms of suffering. Plainly, the infliction of severe pain by law enforcement officials for the purpose of intimidating suspects or witnesses, or obtaining information or confessions from them, would constitute a gross violation of the prohibition against torture.

<sup>61</sup> The UN Convention Against Torture defines torture as, “...Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

<sup>62</sup> Ireland v. United Kingdom, ECHR (1978), Series A, No. 25, at paragraphs 167-8.

to confess guilt, either through the use of torture or any other form of coercion whether direct or indirect, physical or psychological. The use of torture or cruel, inhuman or degrading treatment to obtain a confession is wholly unacceptable, no matter what the circumstances of the alleged offence are.

In Azerbaijan, the Criminal Code contains a legal definition of torture and prohibits the use of torture by the prosecutor, investigator or interrogator (or at their instigation) to compel a suspect, accused, victim or witness to testify during interrogation.<sup>63</sup> The Criminal Procedure Code prohibits the use of torture and physical or psychological force, including the use of medication, withdrawal of food, deprivation of medical aid or other cruel, inhuman or degrading treatment.<sup>64</sup> In addition, the Criminal Procedure Code prohibits the use of violence, threats, deceit or other unlawful acts to obtain evidence and provides for the right to remain silent and the right not to testify against oneself.<sup>65</sup>

## Prevention of Torture

The United Nations Convention against Torture outlines the positive obligation of States to prevent and punish torture. The importance of the role of prevention has been enshrined in OSCE Commitments and in the European Convention on the Prevention of Torture.<sup>66</sup> The European Committee for the Prevention of Torture has set out three fundamental rights for persons detained by the police which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned:<sup>67</sup>

- The right of the person detained to notify a third party of his or her choice (family member, friend, consular official), as set out in Section D, above;
- The right to a lawyer in pre-trial stages, as set out in Section C, above;
- The right of access to a doctor, including the right to be examined, if the person detained so wishes, by a doctor of his or her own choice (in addition to any medical examination carried out by a doctor appointed by the police or prison authorities). The Human Rights Committee – the body charged with overseeing the UN International Covenant on Civil and Political Rights – has stated that the protection of detainees requires that each person detained be afforded prompt and regular access to doctors.<sup>68</sup> The UN Standard Minimum Rules for the Treatment of Prisoners, which all OSCE participating States have committed themselves to observe,<sup>69</sup> set out that a medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary.<sup>70</sup> The UN Special Rapporteur on Torture has recommended that at the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention.<sup>71</sup>

<sup>63</sup> Articles 113, 293.1, 293.2 of the CC.

<sup>64</sup> Article 15 of the CPC.

<sup>65</sup> Article 15, Article 90 and Article 91 of the CPC.

<sup>66</sup> European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe, European Treaties Series, ETS No. 126; OSCE commitments including the Copenhagen Document, (1990) paragraph 16, Budapest Document (1994), and Istanbul Charter for European Security (1999).

<sup>67</sup> 2nd General Report of the Committee for the Prevention of Torture.

<sup>68</sup> Human Rights Committee General Comment 20, paragraph 11.

<sup>69</sup> Vienna Document (1989) paragraph 23.3.

<sup>70</sup> Paragraph 24.

<sup>71</sup> Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, paragraph 39(f).

In Azerbaijan, there is no normative legal act to regulate medical examination of detainees. The regulations regarding medical checkups in police custody and pre-trial detention require that a person be examined by a doctor upon arrival in police custody or other detention facility. The practice of mandatory checkups each time a suspect in police custody is taken to the investigators' office and brought back does not exist in Azerbaijan. However, the accused or suspect who is kept in detention should be able to demand that he undergo a medical examination at any time.<sup>72</sup>

One further safeguard, against ill-treatment during interrogation, is the requirement that records are kept of all interrogations.<sup>73</sup> In Azerbaijan the Criminal Procedure Code provides that interrogation records should contain the date, time and place of the interrogation, the name of the investigator, the questions and answers given as well as any statement made by the defendant about the circumstances of the case.<sup>74</sup> The investigator is required to show the detainee the completed interrogation record and include all requested additions and amendments.

## The Right of Complaint and the Duty of Investigation

The Convention against Torture requires states to carry out investigations of torture or other cruel, inhuman or degrading treatment even where there has not been a formal complaint, and to provide individuals with a right to complain, to have their complaints investigated and to be offered protection against any consequent threats or ill-treatment.<sup>75</sup> The right to lodge complaints against torture or other forms of ill-treatment and to have such complaints dealt with promptly has also been enshrined in OSCE commitments.<sup>76</sup> These rights and responsibilities should be recognized in domestic law. States must hold those responsible to account for torture or other mistreatment, whether the involvement has been through "encouraging, ordering, tolerating or perpetrating" them.<sup>77</sup> The European Court of Human Rights has held that states are obliged to investigate all "arguable claims" of torture and that this is implicit both in the notion of the right to an effective remedy and the right to be protected from acts of torture.<sup>78</sup> Where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the state to provide a plausible explanation as to the cause of the injury. "Where an individual raises an arguable claim that he has been seriously ill-treated by agents of the state, the authorities are obliged to carry out an effective and independent official investigation including the taking of witness statements and the gathering of forensic evidence capable of leading to the identification and punishment of those responsible."<sup>79</sup>

The UN Special Rapporteur on Torture has stated that when a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no relation to that which is investigating or prosecuting the case against the alleged victim.<sup>80</sup>

<sup>72</sup> Since April 2004, health personnel of the whole penitentiary system of Azerbaijan have ceased to be subordinate to the Main Department for Execution of Court Decisions of the Ministry of Justice. Now they are all combined in one department which reports directly to the Justice Minister.

<sup>73</sup> See Copenhagen Document (1990) paragraph 23.1(viii), Principle 23 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Human Rights Committee General Comment 20, paragraph 11.

<sup>74</sup> Article 234 of the CPC.

<sup>75</sup> Articles 12, 13 and 16 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>76</sup> Moscow Document (1991) paragraphs 23.1(ix and x).

<sup>77</sup> Human Rights Committee General Comment 20, paragraph 13 and 14.

<sup>78</sup> *Assenov and others v Bulgaria* ECtHR, Judgment 28 October 1998; *Aksoy v Turkey* ECtHR, Judgment 18 December 1996.

<sup>79</sup> *Ribitsch v Austria*, ECtHR, Judgment 4 December 1995; *Aksoy v Turkey* ECtHR, Judgment 18 December 1996; *Assenov and others v Bulgaria* ECtHR, 28 October 1998, *Kurt v Turkey* ECtHR, Judgment 25 May 1998, *Çakici v Turkey*, ECtHR, Judgment of 8 July 1999, *Akdeniz and others v Turkey*, ECtHR, Judgment 31 May 2001.

<sup>80</sup> Report of the Special Rapporteur on Torture, UN Doc.A/56/156, July 2001, paragraph 39(d).

In Azerbaijan, Article 215.3.1 of the Criminal Procedure Code stipulates that the prosecutor's office is the designated body to receive complaints and to conduct preliminary investigations concerning torture and ill-treatment in detention. According to article 449.3.4 of the Code, an accused or suspect or his lawyer can complain to the court about the procedural actions or decisions of the prosecutor's office regarding torture or ill-treatment in detention. In practice, a person who alleges ill treatment must therefore first apply to the prosecutor and only after that he may apply to a court if he is not satisfied with the decision or a procedural act of the prosecutor.

## Allegations of Torture and Ill Treatment of Defendants

Allegations of torture and ill-treatment were made in all but two of the 15 Trial Groups. In Trial Groups 1-14 the allegations were made primarily against law enforcement officials in temporary detention, although there were also allegations of mistreatment at the time of detention. The types of ill-treatment described either in court or directly to OSCE trial monitors included threatening to harm close relatives, denying food and water, tying to chairs, interrogating and video recording detainees whilst they were naked, threatening with firearms, hitting, punching, kicking, beating with truncheons, bottles and sticks, forcing detainees to stand outside in the rain for hours, burning with cigarettes, injecting with unknown substances, and threats of rape. A selection of defendant descriptions is set out below; further detail is included in Annex 5.

It is noteworthy that the experiences recounted below are consistent with the conclusions reached by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), in its report dated 7 December 2004: "In the light of all the information at its disposal, the CPT is led to conclude that persons deprived of their liberty by the police in Azerbaijan run a significant risk of being ill-treated while in police custody (in particular when being interrogated), and that on occasion resort may be had to severe ill-treatment/torture."<sup>81</sup>

- Beatings

"They started beating people. They brutally beat journalists, my father-in-law, my brother, the husband of my sister, other relatives, and my advocate. They put me into the car and insults and beatings continued in the car. [...] When we reached the yard of DFOC [Department for the Fight against Organized Crime] they took me out of the car, insulted me, beat me and swore at me. They dragged me along the ground for 5 meters. My brother and relatives were also brought there. I was placed on the ground and when I tried to lift my head one of the employees put his foot on my head and I could not move. They were filming it. They took me to the fourth floor to the office of Vaqif Mammadov and for 2 hours 6-7 people in masks beat me one by one. [...]"<sup>82</sup>

"I was taken from the street and during my arrest they put a black sack on my head and placed me in the car. They beat me about the head with a metallic article and I lost consciousness."<sup>83</sup>

"On 18 October after 7 o'clock I was taken again to the office of Vaqif Mammadov where I was beaten for several hours and then was taken to the basement. There they were giving pieces of ice in a towel and insisted that I put them on the place of bruises. [...] They did this in order to hide the traces of torture."<sup>84</sup>

<sup>81</sup> Document CPT/Inf (2004) 37; emphasis in original document.

<sup>82</sup> Iqbal Agazade, court transcript.

<sup>83</sup> Kanan Rustamov, court transcript.

<sup>84</sup> Iqbal Agazade, court transcript.



"I was sitting on the chair and they handcuffed my hands behind my back and started beating me with batons. Then they placed me on the ground and one of them starting beating me on my feet with a baton. Kamil Sadaddinov was beating me in the face. [...] They beat me on the feet five times with breaks. Then they brought me to the cell."<sup>85</sup>

- Threats against close relatives:

"They said: 'if you don't sign the necessary documents we will bring your mother here, and do you know what will happen then?'"<sup>86</sup>

"They threatened me with launching a criminal case against my brother if I did not write what they said in a written statement [...] refused and on 19 October they launched fabricated a criminal case against my brother and Narimanov District Court applied 2 months preventive measure of arrest against my brother. [...] They also threatened me with the arrest of my sister. After all this I gave the testimony in the way they needed."<sup>87</sup>

- Denying food and water

"For four days once a day in the morning they were providing hot tea in a small cup. And only once in 4 days they gave as a part of the food that was brought by my family. Every day they were forcing me to sign some documents. For four days they never took us to the fresh air. They did not even open the window in the cell. We were forced to drink the water from the cell tap."<sup>88</sup>

- Forced nudity

"They were taking us nude for interrogation."<sup>89</sup>

- Threatening with firearms

"On 17 October around 4:00 p.m. about 100 employees of the Department for the Fight against Organized Crime in masks armed with machine-guns attacked my house. Despite the fact that there were little children and elderly people in the house they opened fire to the air and ordered everyone to lie down."<sup>90</sup>

"About 20 men in masks with submachine guns entered the yard of my house. [...] They put me on the ground and handcuffed me. My sons and daughter were shocked. [...] I saw that two of them directed their submachine guns towards my children and one directed towards me."<sup>91</sup>

- Solitary confinement

"I was then transferred to Bailov Prison where I was kept for 40 days in solitary confinement."<sup>92</sup>

<sup>85</sup> Ibrahim Ibrahimli, court transcript.

<sup>86</sup> Kanan Rustamov, court transcript.

<sup>87</sup> Iqbal Agazade, court transcript.

<sup>88</sup> Sardar Jalologlu, court transcript.

<sup>89</sup> Sardar Jalologlu, court transcript.

<sup>90</sup> Iqbal Agazade, court transcript.

<sup>91</sup> Sardar Jalologlu, court transcript.

<sup>92</sup> Sardar Jalologlu, court transcript.

- Injecting with unknown substances

“I frequently lost consciousness and they used injections or water to make me regain my consciousness.”<sup>93</sup>

- Threats of rape

“On 19 October around 6PM they took me to the office of Samed Djafarov, deputy of V. Mammadov. [...] He asked me questions and I refused to answer. He called two guys and they started beating me on the feet with batons. Samed Djafarov said they will first torture me and if I don’t speak then they will apply immoral acts towards me. [...] Vaqif came in and he became unhappy that they did not make me speak and he instructed to use immoral behaviour against me if I continue like this. [...] When I asked my cellmates why they do not want the Red Cross to know about their tortures they said that they were told if they speak then they will be raped.”<sup>94</sup>

### **Allegations of Torture and Ill Treatment of Witnesses**

In addition to reported torture and mistreatment of defendants, there were numerous allegations of torture and ill-treatment of witnesses:

“They caught me on the Square but they released me because there was no room in the bus. Next morning around 7:00 a.m. the police came to me and said that there were some documents to be signed in the commission. But instead they took me to the police station #30. [...] They started beating me. [...] When I went to the toilet to wash the blood from my face, Vuqar, the police officer, came in, took me by the hair and beat my face against the mirror. Then he took out his pistol and directed to my mouth and said that I should write what the boss says to. [...] They wanted me to write that Arif and Rauf made speeches there, Isa Gambar did not manage to come and that the election was democratic. [...] Then Vuqar put my two fingers in the doorway and broke them. Only then I agreed to write that the elections were democratic but I said I would not lie about those individuals. Then I was brought to Fuad Mammadov who brought all 32 police officers and ordered them to beat me and added that those who didn’t beat hard enough would be dismissed. [...] They placed me on the chair and beat on the end of my foot. For a while they brought pen-like article and gave electricity current to my foot, it hurt my head. [...]”<sup>95</sup>

“I am a member of the Azerbaijan Democratic Party (ADP). I was an observer during the election of 15 October 2004. On 16 October I was on the square. The same day I left for my home town, Agstafa. On 3rd of November I was brought to Baku and at 3:00 at night I was taken to Police Station #9. I was beaten there because I did not write what they wanted.”<sup>96</sup>

“I was forced to sign what they wrote. Then I was brought to the Prosecutor’s Office. When I told the truth there they said that they would have to send me back to the police station. I was taken back to the police station and tortures renewed. The next day they brought photos of my mother, sister, father and brother and proposed me to choose between either them or to write what they said. I signed what they said.”<sup>97</sup>

<sup>93</sup> Kanan Rustamov, court transcript.

<sup>94</sup> Sardar Jalologlu, court transcript.

<sup>95</sup> Mushfiq Mammadov, court transcript.

<sup>96</sup> brak przypisu!

<sup>97</sup> Shamsi Qahramanov.



"I stayed in the hospital for three days and then went home. I was in bad shape; my eyes were full of blood. The morning after I returned home, police officers came together with Djumshud Qasimov, the investigator. They said I had to go with them. I told them that I could not move, I cried and asked them not to take me. They did not pay attention to this and said that they would pick me up at 11:00 a.m. [...] They took me to the police station in Hovsan settlement where they kept me for 7-8 hours. I feel embarrassed to tell about what happened there. Djumshud took me to the room and started to obtain testimony using bad language against me. [...] When I told him about what happened he shouted and said that I will not write it in this way and that I should write what he tells me to. He said at minimum I will get 12 years of imprisonment. I got scared and I wrote what he said."<sup>98</sup>

As a result of the alleged ill-treatment several witnesses claimed during the trials that their statements were to be considered falsified:

"Everything except my bibliographic data is false, it was written by force. What hurts me the most is that Djumshud forced me to write that I saw how wooden and metallic articles were brought to Musavat Party's Office. [...]"<sup>99</sup>

"I was invited to the Prosecutor's Office before coming to testify in the court. I asked the judge to ensure my security. I know that I will be arrested after leaving this court room. [...] I addressed three embassies for asylum. [...] I am ashamed that under force I gave testimony against these persons."<sup>100</sup>

"They were forcing me to give testimony against Rauf. To say that he was distributing stones and pieces of wood. Most of the testimony is false. I did not see any of the defendants on the square. [...] They threatened me with 14 years of imprisonment. [...] I did not write that testimony I simply put my signature at the bottom. They forced me to do it."<sup>101</sup>

"They threatened me with a bottle and threatened my mother and sister. The police tried to use pressure and beatings to obtain information from me against Sardar Jalaloglu. [...] Almost everything is false. [...] I retract my testimony given during the preliminary investigation because it was obtained under pressure. I was punched mainly to my ribs and legs."<sup>102</sup>

## **Alleged Perpetrators and Venues of Torture and Ill Treatment**

The instances of ill-treatment and torture reported by defendants and witnesses took place at temporary places of detention. There were no allegations of torture or ill treatment at Bailov Remand Prison. Allegations of ill-treatment were made against police officers and in some cases, against the heads and deputy heads, of the following places of temporary detention:

- Head Department for the Fight Against Organized Crime of the Ministry of Interior
- Azizbeyov District Police Department
- Baku City Main Police Department
- Binagadi District Police Department
- Gabala District Police Department
- Gazakh District Police Division

<sup>98</sup> Nahayat Qasimova.

<sup>99</sup> Nahayat Qasimova.

<sup>100</sup> Nahid Mammadov

<sup>101</sup> Novhal Nagiyev

<sup>102</sup> Shamsi Qahramanov

- General Prosecutor's Office
- Gobustan Region Prosecutor's Office
- Khatai District Police Department
- Narimanov District Police Department
- Nasimi District Police Department
- Baku city Police Division No. 30
- Sabayil District Police Department
- Sabirabad District Police Department
- Yasamal District Police Department
- Zagatala District Police Department

## **H. STATE RESPONSIBILITY TO PURSUE ALLEGATIONS OF TORTURE AND ILL TREATMENT**

State authorities have an obligation to act when confronted with allegations of torture or ill-treatment and to prosecute offenders.<sup>103</sup> Judges have particular responsibilities to follow up allegations of torture. The European Committee on the Prevention of Torture has spelt out the extent of this duty. When criminal suspects are brought before a judge at the end of police custody and they allege ill-treatment, the judge should record the allegations in writing, order immediately a forensic medical examination and take the necessary steps to ensure that the allegations are properly investigated. This approach should be followed whether or not the person concerned bears visible external injuries. Even in the absence of an express allegation of ill-treatment, the judge should request a forensic medical examination whenever there are grounds to believe that a person brought before him could have been the victim of ill-treatment.<sup>104</sup>

Evidence of torture is often difficult to obtain, and the evidentiary principles to be applied in determining torture has occurred must reflect the difficulties in substantiating allegations of torture and ill-treatment. With regard to the burden of proof, the Special Rapporteur on torture has recommended that when allegations of torture are raised by a defendant during a trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession [or other incriminating evidence] was not obtained by unlawful means, including torture and similar ill-treatment.<sup>105</sup> In the case of *Aksoy v. Turkey*, the European Court of Human Rights went even further by holding that “where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation as to the cause of the injury, failing which a clear issue arises under Article 3 [ECHR].”<sup>106</sup> Finally, so far as evidentiary rules are concerned, Article 15 of the Convention against Torture provides that States should ensure that any statement which is established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

For the reasons set out in this report, there are grave concerns that the authorities in Azerbaijan are not meeting their obligations in this regard. In summary, no thorough and effective investigation, capable of leading to the identification and punishment of those responsible, and including access for the complainant to the investigatory procedure, was carried out effectively or promptly, either by the authorities before the trials, or by the court at the hearing of the trials. In this regard, there is particular concern that the judges in Trial Group 15 did not carry out an adequate investigation of the allegations

<sup>103</sup> Copenhagen Document (1990) paragraphs 16.6 and 16.7, Budapest Document (1994) paragraph 20.

<sup>104</sup> Para. 45, Extract from the 12th General Report [CPT/Inf (2002) 15].

<sup>105</sup> Interim Report A/56/156 of 3 July 2001, paragraph. 39(j).

<sup>106</sup> *Aksoy v. Turkey*, App. No. 21987/93, Judgment of 18 December 1996, paragraph. 61.

of incidents of torture that were made by both the defendants and witnesses. The approach of the judges to determining the issues that were raised and the manner in which they dismissed the evidence of incidents of torture demonstrated a failure to apply the evidentiary principles set out above. A more detailed analysis of the approach that was taken by the court in Trial Group 15 is set out in Annex 4.

## ***I. PROHIBITION OF THE USE OF EVIDENCE OBTAINED BY TORTURE OR OTHER ILL TREATMENT***

The United Nations Convention Against Torture prohibits statements that have been made as a result of torture from being invoked as evidence in court proceedings.<sup>107</sup> In addition, the Criminal Procedure Code provides that information, documents and other items cannot be accepted as evidence if they have been obtained by violence, threats, deceit, torture or other cruel, inhuman or degrading acts.<sup>108</sup>

Allegations of torture and ill-treatment were made in all the Trial Groups except Trial Group 11 and Trial Group 12. In every instance, the judgments state that the allegations were not proved. The only exception was Trial Group 5 in which the judgment does not even refer to the allegations of torture.

In addition, statements that were alleged to have been made under duress were expressly relied upon as evidence in Trial Groups 2, 3, 4, 7, 8, 10 and 13 and 15. In general, the response of the courts to the numerous motions by the defence that statements made in temporary detention facilities were obtained by torture or other ill-treatment consisted of ordering medical examinations and calling law enforcement officials as witnesses.

### **Medical Examination**

The allegations of torture were not reacted to immediately in all the Trial Groups. In at least ten cases, the bench did not order a medical examination on the day that the allegation of torture was first made before the court. In all instances in which medical examinations were ordered, they either found no proof of injuries, or that the injuries had preceded the arrest of the defendant or that the injuries were caused as a result of the disorders caused by the defendants.

In a number of instances the defence counsel did not ask the court to investigate the torture allegations. There is, however, an obligation for the judge to immediately order a forensic medical examination, even in the absence of an express allegation of ill-treatment, whenever there are other grounds to believe that a person brought before him could have been the victim of ill-treatment.<sup>109</sup>

### **Witnesses**

Witnesses called to give evidence regarding the allegations of torture included the officials against whom the allegations had been made and other law enforcement officials. All officials against whom the allegations had been made denied any involvement in acts of torture or ill-treatment and none were suspended from their posts pending the results of the investigation. In a few cases medical staff who examined the defendants upon arrival at the Bailov Remand Prison were also called as witnesses.

The approach of the court in Trial Group 15 to determining whether to admit the evidence of witnesses who alleged that they had been tortured was flawed. On the evidence given to the court by these

<sup>107</sup> Article 15 of the CAT.

<sup>108</sup> Article 125 of the CPC.

<sup>109</sup> CPT/Inf/E (2002) 1, Rev. 2003, European Committee for the Prevention of Torture, page 14, para. 45, <http://www.cpt.coe.int/en/docsstandards.htm>

witnesses, no reasonable tribunal should have come to the conclusion that it was sure, beyond reasonable doubt, that such torture did not take place. The court did not carry out any proper investigation into the allegations of torture and placed far too much reliance on the findings of other courts in previous trials. In effect, the court considered itself bound to come to the same conclusions as the other courts, without questioning the reasoning behind those other decisions or examining in detail all the evidence that was available to the other courts when determining the issues and comparing that evidence with the evidence which was available to it in the case of Trial Group 15.

## **J. RIGHT TO A PUBLIC HEARING**

The right to a public hearing is an essential safeguard of the right to a fair trial. The European Convention, as well as OSCE commitments, provides that the public should have access to all hearings, except in a number of narrowly defined circumstances, which were not applicable in the cases related to the post-election violence.<sup>110</sup> In addition, the CPC provides that hearings must be held in public, whilst also safeguarding state, professional, commercial, personal and family secrets.<sup>111</sup> All court hearings in the post-election related cases were, ostensibly, held in public. However, numerous restrictions and impediments interfered with this right.

In Trial Group 15, for example, access to the court room was strictly monitored and limited by the court security staff. On numerous occasions during the trial the defendants and their lawyers protested to the court that members of the public were being prevented from entering the court room, despite the obvious availability of seats in the court room.

During the first preliminary hearing in Trial Group 1, OSCE monitors were unable to gain access to the courtroom as so many people were trying to gain access. Following these initial difficulties, the OSCE informed the President of the Court for Serious Crimes and the Ministry of Justice of its intention to monitor the trials of those persons charged with criminal offences in connection with post-election violence. Thereafter, OSCE trial monitors did not experience problems in gaining access to hearings, except in one set of trials when OSCE trial monitors were denied access to the courtroom by a court official on two separate occasions in Trial Group 4.

Although the trials were held in public, a number of factors contributed detrimentally to public access to the trials:

- The public galleries were far too small to accommodate all those who wished to observe the hearings and, in a number of trials, relatives of the defendants could not gain access. Trying defendants together in groups of seven to ten aggravated this problem.
- People were generally admitted to the public gallery of the Court for Serious Crimes only after they had provided court officials with a copy of their identification cards and their personal details had been written down by court officials.<sup>112</sup>
- The Court for Serious Crimes did not post information about scheduled hearings or otherwise make this information available to the public. As a result, the OSCE had to contact the court by phone in order to obtain information about the date and time of pending hearings. In two instances, court secretaries stated that they were not authorized to provide such information.
- In some instances, members of opposition newspapers, including Yeni Musavat and the Baku News were not admitted to the courtroom by court officials. In some cases, journalists were

<sup>110</sup> Article 6(1) of the ECHR, Copenhagen Document (1990) paragraph 5.16.

<sup>111</sup> Article 27 of the CPC.

<sup>112</sup> Article 310 of the CPC provides that '...In order to ensure security during the hearing, identity documents and effects of those entering the courtroom may be checked by virtue of the instructions of the Presiding Judge'.

refused entry without grounds and in other cases lack of space in the public gallery was cited as the reason.

## **K. RIGHT TO TRIAL BY AN INDEPENDENT AND IMPARTIAL TRIBUNAL**

Under the International Covenant on Civil and Political Rights, the European Convention and OSCE commitments, everyone is entitled to a hearing by an independent and impartial tribunal established by law.<sup>113</sup> The requirement of independence and impartiality are interlinked.

In order to decide whether a tribunal is independent the European Court considers the body's structure, powers and composition, including the manner of appointment and duration of office of the adjudicators, the existence of guarantees against outside interference and generally the appearance of independence. In order to meet the "independence" criterion, the appointment of the members of the tribunal by the executive will not in itself violate the European Convention.<sup>114</sup> As to the duration of term of office and guarantees against outside interference the European Court has held that a 6 year term of office and irremovability of judges during this time are sufficient guarantees of judicial independence.<sup>115</sup>

Ascertaining whether a tribunal is impartial involves both a subjective and an objective enquiry. For subjective impartiality to be proven, the European Court requires actual proof of bias; personal impartiality of a judge is presumed until there is evidence to the contrary.<sup>116</sup> As to the objective test, the European Court has made clear that any judge in respect of whom there is a legitimate reason to fear lack of impartiality must withdraw.<sup>117</sup> If a defendant raises the issue of impartiality, it must be investigated unless it is "manifestly devoid of merit".<sup>118</sup> In respect of Trial Group 15, two members of the court had not disclosed that they were related to people who were, or had been, involved in the preliminary investigation or prosecution of the offences. Whilst no evidence was adduced to show that the judges were biased as a result of this relationship, it was unsatisfactory that the judges concerned had not disclosed their relationships with others involved in the investigation and prosecution of the offences. The failure to make this disclosure, until it was brought to the attention of the court by the defendants and their lawyers, did not engender confidence as to the impartiality of the judges.

### **Independence**

Judges of the appeal courts and of the Supreme Courts are appointed for ten years, whereas other judges are appointed for a five year renewable term. According to the Constitution<sup>119</sup> and the Law on Courts and Judges, lower level judges are appointed directly by the president whereas the Constitutional Court, Supreme Court and appeal courts judges are appointed by the parliament upon presentation of the president. Judges are irremovable during their terms of office and have immunity. However, after obtaining an opinion of the Supreme Court, the president can apply to the parliament with a view

<sup>113</sup> ICCPR Article 14, ECHR Article 6(1), Vienna Document (1989) paragraph 13.9.

<sup>114</sup> Campbell and Fell v. the United Kingdom (1984).  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Campbell%20%7C%20Fell%20%7C%20United%20%7C%20Kingdom&sessionid=281511&skin=hudoc-en>

<sup>115</sup> Le Compte, Van Leuven, De Meyere v. Belgium (1981),  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=4&portal=hbk&action=html&highlight=Le%20%7C%20compte%20%7C%20Belgium&sessionid=281511&skin=hudoc-en>

<sup>116</sup> Hauschildt v. Denmark (1989)  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbk&action=html&highlight=Hauschildt%20%7C%20Denmark&sessionid=281511&skin=hudoc-en>

<sup>117</sup> Piersack v. Belgium (1982)  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbk&action=html&highlight=Piersack%20%7C%20Belgium&sessionid=281511&skin=hudoc-en>

<sup>118</sup> Remil v. France 1996.

<sup>119</sup> Article 109, paragraph. 9 of the Constitution of the Azerbaijan Republic.

to dismissal of a judge who has committed a crime. The judges of the Constitutional Court, Supreme Court and appeals courts can then be dismissed with a majority of 83 votes and other judges can be dismissed with a majority of 63 votes of the 125 MPs.

In practice, the procedure of appointment for judges in Azerbaijan remains problematic despite steps taken by the authorities to reform the judiciary (including the Presidential decree of 17 January 2000 to improve the procedures for the appointment of judges). In April 2000, qualifying exams were held in order to ensure professionalism of judges. The test scores of this exam were not made public and there is evidence to suggest that the procedure for the appointment of judges continues to leave room for partiality. In 2001, the Human Rights Committee expressed concern at reports of irregularities during the selection procedure in practice and at the lack of security of tenure of judges and, in particular, at the fact that decisions concerning the assignment of judges and affecting their seniority appear to be made at the discretion of the administrative authorities, which may expose judges to political pressure and jeopardize their independence and impartiality.<sup>120</sup> Furthermore, in its resolution 1305 (2002) the Parliamentary Assembly of the Council of Europe called on the Azerbaijani authorities to reinforce impartiality in the procedure of nomination of judges.

## Impartiality

Impartiality means absence of prejudice or bias. It means that the bench shall not have a preconceived idea as to the guilt of the defendant and therefore as regards results of the trial. The guarantee of an “impartial” tribunal is closely inter-related with the guarantee of an “independent” tribunal. An objection to a judge may be considered justified and be granted unconditionally if there are grounds for believing that the judge has a direct or indirect interest in the prosecution, as well as in other circumstances when there is a doubt as to his impartiality.<sup>121</sup>

There are a number of examples which may cast doubt on the impartiality of the bench.

On more than one occasion defendants protested by means of hunger strike and renunciation of their defence counsel against what in their view amounted to partiality of the bench. In Trial Group 3, several defendants refused to participate in the proceedings on 12 February 2003, arguing that the presiding judge had rejected all motions made by the defence without giving reasons for his rejection as required by the CPC. The presiding judge refused to consider their objections relying on article 109.1 CPC, saying the objections were not grounded.

In respect of Trial Group 15, the judges rarely refused a motion by the prosecutor for an adjournment, when on occasion there seemed no justification for granting one. In particular, the court granted an application made by the prosecution to adjourn the case for ten days, so that he could prepare his closing speech, without calling upon the prosecutor to give reasons for such a long delay. The defendants objected strongly to such a long adjournment, but the court seemed to pay no attention to the concerns of the defendants or to any prejudice that such a long adjournment might cause them.

Again, in respect of Trial Group 15, on many occasions the court declined to give rulings in respect of motions made by the defendants or their advocates, ruling instead that it would postpone consideration of such motions until later in the case. Of particular concern was the decision of the judges to postpone consideration of crucial questions such as the number of witnesses that the court would allow to be

<sup>120</sup> The Human Rights Committee, Azerbaijan, U.N. Doc. CCPR/CO/73/AZE (2001).

<sup>121</sup> Article 109 of the CPC.



called at the request of the defence. This left the defendants in a state of uncertainty as to which evidence they would be allowed to present in their defence. Plainly, this may have prejudiced the way in which the defendants were able to present their cases. Moreover, the court did limit the number of witnesses called at the request of the defence, which was a serious violation of Article 6 of the ECHR, as elaborated below.

A detailed summary of the motions made by the defendants and refused by the court is set out in the questionnaires in Annex 5.

## **L. RIGHT TO A FAIR HEARING**

The right to a fair hearing lies at the heart of the concept of a fair trial.<sup>122</sup> The right to a fair hearing encompasses all the procedural and other guarantees of a fair trial that are laid down in national and international standards and obligations. The right to a fair hearing in criminal trials includes a number of concrete rights, including inter alia the right to be presumed innocent and the right to defend oneself in person or through counsel. The right to a fair hearing, however, is broader than the sum of these individual guarantees, and depends on the entire conduct of the trial. One essential element of a fair hearing is the principle of “equality of arms,” which must be observed throughout the trial process. Equality of arms means that both parties must be treated in a manner ensuring that they have a procedurally equal position during the course of the trial, and are in an equal position to make their case.<sup>123</sup> It means that each party must be afforded a reasonable opportunity to present its case, under conditions that do not place it at a substantial disadvantage vis á vis the opposing party.

In respect of Trial Group 15, the defendants frequently complained to the court that the fact that they were segregated when taken back to prison at the end of the court hearing, together with the limitation of having only one copy of the court materials among them, made it very difficult for them to prepare their cases, particularly cross-examinations of the witnesses. In the questionnaires completed by the defence lawyers, many complaints were made in relation to the refusal by the court to provide copies of documents and video tape recordings to the defendants and lawyers. The lawyers also complained that they were not given an opportunity of viewing the video tapes together with their clients.

### **Presumption of Innocence**

The International Covenant on Civil and Political Rights, the European Convention and OSCE commitments provide that everyone has the right to be presumed innocent until and unless they are convicted.<sup>124</sup> The right to be presumed innocent applies to suspects before criminal charges are filed and continues until a conviction is confirmed. The right not to be compelled to testify against oneself and the right to remain silent, which are dealt with above, are rooted in the presumption of innocence.

The presumption of innocence not only requires that judges and juries refrain from pre-judging cases but also applies to all other public officials. The presumption of innocence is not violated if the authorities inform the public about criminal investigations and in doing so name a suspect, or state that a suspect has been arrested or has confessed, as long as there is no declaration that the person is guilty.<sup>125</sup>

<sup>122</sup> ICCPR Article 14, ECHR Article 6(1), Vienna Document (1989) paragraph 13.9.

<sup>123</sup> Ofirer and Hopfinger, Nos. 524/59 and 617/59, Dec. 19.12.60, Yearbook 6.

<sup>124</sup> ICCPR Article 14.2, ECHR Article 6(2), Copenhagen Document (1990) paragraph 5.19.

<sup>125</sup> Krause v. Switzerland, 13 DR 73, 3 October 1978, Worm v. Austria (1997)  
<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=worm%20%7C%20austria&sessionid=281511&skin=hudoc-en>

However, public authorities must refrain from making statements about the guilt or innocence of defendants before the outcome of the trial.<sup>126</sup>

In the days following the post-election violence, statements were made to the press by the President-elect and by representatives of the Ministry of Interior, Baku Main Police Department, the Office of the General-Prosecutor and the Ministry of National Security, in which unlawful acts were attributed to the leaders and members of the Musavat, ADP and Umid parties. For example:

- The President-elect, Ilham Aliyev, was quoted in an interview as saying, "It is not us, but Musavat leader Isa Gambar and his colleagues that began mass disturbances. They were damaging the city.... Musavat and its officials bear all responsibility for these events. A leader of the Musavat Party will be publicly condemned as a provoker and a person guilty of bloodshed."<sup>127</sup>
- The Main Police Department of the City of Baku and the Office of the Prosecutor released a statement that, "Destructive forces, having understood that they would lose the fair and free Presidential Elections and having become aware of this in the course of the elections, which were democratic and transparent, once again made use of unlawful actions. In this situation the Head of the Musavat Party, Isa Gambar and his supporters were particularly active."<sup>128</sup>
- The Mayor of the City of Baku released a statement to the effect that "On the night of 15 October 2003 and the afternoon of 16 October beginning from 14:00 a group of ferocious people provoked by Isa Gambar, the head of the Musavat party, Igbal Agazade, the head of the Umid party, Sardar Jalaloglu, the Secretary-General of the ADP and some other high-ranking officials of these parties who had realized upfront that they were going to lose free and fair elections of the president of the Republic of Azerbaijan, committed mass disturbances in the city and having blatantly breached the public order injured residents of Baku, including children, women and the elderly, as well as numerous police officers and journalists."<sup>129</sup>

Particular attention should be paid to ensure that no attributes of guilt be borne by the defendant during the trial. Such attributes can include requiring the defendant to wear handcuffs, shackles or prison uniform in the courtroom. However, with only a few exceptions, all the defendants were seated, for the duration of all trial hearings, in large metal cages inside the courtroom. The defendants were not permitted to give their evidence from the witness box, as all other witnesses were, but were forced to give their evidence from behind the bars of the cage in which they were incarcerated during the court hearings.

## The right to be present at trial

Everyone charged with a criminal offence has the right to be tried in their presence, in order to hear and challenge the prosecution case and present a defence. The right to be present at trial is an integral part of the right to defend oneself. The European Court has stated that the object and purpose of the right to a fair trial means that a person charged with a criminal offence is entitled to take part in the first instance trial.<sup>130</sup> The Criminal Procedure Code provides for the right to be present at court hearings at first instance.<sup>131</sup> In full accordance with this standard, the defendants were present throughout all the first instance court hearings.

<sup>126</sup> UN Human Rights Committee General Comment 13, para. 7.. See also the Views of the UN Human Rights Committee on Communication No. 770/1997, Russian Federation, 18 July 2000, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/6a0a8eb33da16258c125696c003210b6?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/6a0a8eb33da16258c125696c003210b6?Opendocument)

<sup>127</sup> Extract from Zerkalo Newspaper, 21 October 2003. Unofficial translation.

<sup>128</sup> Information from the Main Police Department of the City of Baku and the Office of the Prosecutor, Azerbaijan Newspaper, 16 October 2003. Unofficial translation.

<sup>129</sup> Information from the Executive of Baku City concerning mass disturbances committed by Musavat Party on 15-16 October 2003, Azerbaijan Newspaper, 18 October 2003. Unofficial translation.

<sup>130</sup> Ekbatani v. Sweden (1988) <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Ekbatani%20%7C%20Sweden&sessionid=281511&skin=hudoc-en>

<sup>131</sup> Article 91 and Article 311 of the CPC.



In respect of Trial Group 15, on one occasion during a court hearing there was a very serious and spontaneous outburst of extremely disorderly and disruptive behavior by some of the defendants. This incident of unruly behavior occurred when a witness who was alleged to have been one of the perpetrators of torture was called to give evidence at the request of the prosecution. The conduct of some of the defendants was such that it was reasonable for the court to exclude them from the hearing, which it did. However, no consideration was given by the court to the question of which defendants had been responsible for the unruly behavior. Instead, the court excluded all the defendants, whether or not they had been involved in the disruption, and continued the hearing in their absence. The court later reversed its decision and all the defendants were allowed to return to the court.

## **Disclosure by prosecution of material information**

The right to adequate facilities to prepare a defence, which is an element of equality of arms, requires that defendants and their counsel be granted access to documents and evidence that might help prepare their case, exonerate or, if necessary, mitigate a penalty. The European Commission has stated that the right to adequate facilities to prepare a defence implies the right of reasonable access to prosecution files.<sup>132</sup> This provision can also be found in national law.<sup>133</sup>

However, in some instances, defence lawyers stated they had not had the opportunity to obtain or provide comments on prosecution documents. In some cases the court would not allow the defence lawyer to make a photocopy of the court file and only permitted defence lawyers to review the file during the trial hearings. Defence lawyers asserted these procedures had a serious impact on their ability to defend their clients adequately. For instance, defence lawyers in Trial Group 7 said they had been given copies of some but not all prosecution documents. They stated that they were given a copy of the indictment but they did not have enough time to review the court file and had limited access to photographic and video evidence submitted by the prosecution. In some instances, defence applications for access to all prosecution evidence were denied.

In respect of Trial Group 15, on numerous occasions the defence lawyers complained to the court that the prosecution had concealed from the court video tape recordings of the events on 16 October which would have assisted the defence. In particular, it was argued that the prosecution had failed to disclose recordings which would have shown that some of the defendants did not make speeches from the tribune and were not responsible for inciting or inflaming the demonstrators. No proper enquiry was made by the court into this issue. The prosecution was not called upon by the court to provide any evidence to rebut the defence suggestion. The matter should have been investigated thoroughly by the court, and the prosecution should have been required to satisfy the court that full disclosure of all material had been made.

## **The right to competent and effective legal counsel**

Legal assistance must be practical and effective. The European Court has held that while the authorities can not be held responsible for every shortcoming of a legal aid lawyer, the mere nomination of a defence lawyer is insufficient. If the authorities become aware that a lawyer is not fulfilling his or her duties towards the client, for whatever reason, the authorities must either replace or require the lawyer to fulfill his or her obligations towards the client.<sup>134</sup>

<sup>132</sup> Jaspers v. Belgium 27 DR61.

<sup>133</sup> Article 284 and 285 of the CPC.

<sup>134</sup> Artico v. Italy (1981)

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=artico%20%7C%20Italy&sessionid=281511&skin=hudoc-en>.

Securing competent and effective legal counsel proved to be a particular point of concern, notably due to the low quality services provided by state-appointed lawyers. A significant number of defendants with state-appointed representation informed OSCE monitors they had been able to meet with their lawyers only on very rare occasions, if at all.

The following examples illustrate cases where defendants complained that the role of the state-appointed lawyers was limited to urging them to sign the record of interrogation. In Trial Group 3, defendant Shahin Gojayevev stated, "I was bleeding after having been beaten by the police when my lawyer entered the room and signed the interrogation record." In Trial Group 11, defendant Miralamov Rahib said that his state appointed lawyer, Ibrahim Gasimov, told him to confess that he had held a stone in his hands during the post-election violence and urged him to sign documents despite not knowing their content. The lawyer further urged him to sign a number of blank pages. In Trial Group 10, Muzafferov Mazahir and Ismaylov Zakir refused their state-appointed lawyers altogether due to what they described as the inadequacy of the services provided by them.

In respect of Trial Group 15, there were serious concerns regarding the quality of work of the defence lawyers. It was clear that on numerous occasions the defence lawyers had not adequately prepared questions to be put in cross-examination of key witnesses, relying instead on improvised and, often, argumentative questioning. The lawyers rarely took notes of the evidence and when making submissions to the court rarely used prepared notes or skeleton arguments. Questioning of the witnesses by defence lawyers, and submissions by them to the court, were often unstructured, unplanned and inadequately prepared. The defence lawyers demonstrated a lack of detailed knowledge of the principal international human rights instruments, notably the European Convention, the United Nations Convention Against Torture and the International Covenant on Civil and Political Rights.

## **The right to call and examine witnesses**

The defendant has the right to examine or have examined witnesses against him or her, and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him.<sup>135</sup> The general principle is therefore that defendants must be allowed to call and examine witnesses whose testimony they consider relevant to their case, and must be able to examine any witness who is called by the prosecutor. This provision does not give the defendant an absolute right to call witnesses or a right to force the domestic courts to hear a particular witness; domestic law sets conditions for the admission of witnesses.<sup>136</sup>

The procedure for the summoning and hearing of witnesses must be the same for the prosecution as the defence and equality of arms is required. All evidence relied on by the prosecution should be produced in the presence of the defendant at a public hearing with a view to adversarial argument. Only exceptional circumstances will permit the prosecution to rely on evidence from a witness that the defendant has been unable to cross examine.

Despite these principles, and although the defence was able to summon a considerable number of witnesses, many reasonable motions to summon witnesses for the defence were unsuccessful. For instance, in Trial Group 13, the defence motion to call a witness to refute the only prosecution witness was denied. Moreover the prosecution witness failed to appear before the court and as a result the defence was not able to cross-examine him. At the same trial, the court dismissed another defence

<sup>135</sup> ICCPR Article 14.3(e), ECHR Article 63(d).

<sup>136</sup> Article 95 of the CPC.

petition on behalf of Natig Kerimov to summon two witnesses who he had taken to hospital following the events of 16 October. According to the defence, the two witnesses would have testified that the defendant had not been involved in disturbances and on the contrary was helping people injured during clashes. In Trial Group 3, motions from the defence to invite witnesses were not rejected, but the judge indicated that it was the responsibility of the defence to find, invite and ensure the participation of these witnesses. In another case, 129 witnesses gave statements during the pre-trial stages. Twenty of the witnesses subsequently sent letters to the court stating they could not attend the trial process but that they confirmed the written statements. The court went on to rely on these statements and the defence did not have the opportunity to cross examine the witnesses.

Another concern was the procedure of examination of witnesses. According to the Criminal Procedure Code, witnesses shall be questioned separately during the trial and in the absence of those witnesses yet to be questioned.<sup>137</sup> This rule is aimed at prevention of undesirable influence of the witnesses. However, in a number of cases windows and doors of the courtrooms were open and witnesses for the prosecution waiting in the corridor for their turn could hear everything taking place at the hearing.

In most of the trials observed the judges examined only evidence submitted by the prosecution, including tens of witnesses (mainly soldiers and law enforcement officials) and videotape and photographs of groups of people breaking windows, damaging cars and beating law enforcement officials. At the same time, in breach of the principle of equality of arms and adversarial proceedings, defence lawyers were not given an equal possibility to rebut criminal charges, to bring attention to circumstances releasing the defendant from criminal responsibility or mitigating circumstances. The court dismissed almost all motions of the defence for consideration of additional evidence on behalf of the defendant.

For example, in Trial Group 2, the court refused all motions submitted by the defence to admit as evidence video cassettes and photographs showing violence on behalf of the law enforcement officials. The court dismissed the evidence as irrelevant, arguing that the defendant was not present in the video cassette or photographs so they had no bearing on the criminal responsibility of the defendants. Nevertheless, the court heard tens of victims and witnesses for the prosecution who testified about the post-election violence in general and did not directly address the involvement of the particular defendant. With few exceptions, the court examined all evidence submitted by the prosecution and no evidence on behalf of the defendants, thereby violating the right of the defendants to present their case to the court under conditions which did not place them at a substantial disadvantage vis-a-vis the prosecution.

In respect of Trial Group 15, the court did allow the defence to adduce tape recordings showing that violence had been used by the police and other government forces towards the demonstrators. However, the court severely restricted the number of witnesses called at the request of the defence. The defendants indicated to the court that they wished for as many as 600 witnesses to be called to give evidence to prove, amongst other things, that the defendants had not been responsible for providing articles to be used as weapons by the demonstrators, that the defendants had not addressed the crowd in the Square except to call upon them not to use violence and not to react to provocation by the police, and, more generally, that the defendants had not planned or orchestrated the civil disorder which broke out on the 16 October. In addition, the defendants requested the court to call a number of senior officials from the police and other government agencies, including the Baku Administration and the Ministry of Internal Affairs. The defendants submitted that these witnesses should be examined by the

<sup>137</sup> Article 328 of the CPC.

court with a view to showing that it was the police and government authorities who had initiated the violence and who had, in effect, incited the demonstrators to react in the way that they did. The court refused to call these senior officials, in line with its approach of severely limiting the number of witnesses called at the request of the defence. Whilst it is accepted that it is the duty of the court to ensure that only those persons who can give relevant evidence should be called as witnesses, and that the trial be kept within reasonable bounds, the restrictions placed on the defendants by the court could be construed as a serious violation of Article 6 of the ECHR.

## **M. RIGHT TO A PUBLIC AND REASONED JUDGMENT**

Everyone has the right to receive a public and reasoned judgment within a reasonable time.<sup>138</sup> The right to receive a public judgment contributes to the right to a fair trial by enhancing public scrutiny whilst the right to a reasoned judgment is an essential element of the right to appeal.

### **The right to a public judgment**

The Criminal Procedure Code provides that all judgments should be read out in court.<sup>139</sup> However, in the majority of cases, the judgments were only partially read out in court. The reason given for the partial reading was the lengthy nature of the judgments. In addition, in some cases the judge read the judgment so quietly that people in the public gallery could not follow it. Furthermore, the Criminal Procedure Code provides that the acquitted or convicted person and their defence counsel should receive a copy of the judgment no later than three days after it has been announced.<sup>140</sup>

### **The right to a reasoned judgment**

The Criminal Procedure Code states that the judgment should be lawful and well-founded. In order for a judgment to be considered lawful, it must fulfil the requirements of the Constitution and of the Criminal Procedure Code of Azerbaijan. In addition, four requirements must be satisfied in order for a judgment to be considered well-founded or reasoned:

- It must be based upon sufficient evidence;<sup>141</sup>
- It must be based solely on evidence that was examined during the court investigation;<sup>142</sup>
- It must be consistent with the evidence that was examined during the court investigation;<sup>143</sup> and
- It must be based solely on evidence that was secured and examined with the equal participation of both parties.<sup>144</sup>

In respect of Trial Group 15, OSCE observers assessed that there was not sufficient evidence upon which the court could base a reasoned conclusion that it was certain the defendants organized, orchestrated or were parties to the disorder which took place on the 16 October 2003. The evidence of witnesses who purported to identify the various defendants as being involved in inciting the crowds to violence and other particular acts was so poor and so discredited in the trial that no reasonable tribunal could have relied upon it. More particularly, the evidence of those prosecution witnesses who

<sup>138</sup> Article 6(1) of the ECHR and Article 27 and Article 349 of the CPC. See also *Van de Hurk v. Netherlands* (1994). <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Van%20%7C%20de%20%7C%20Hurk%20%7C%20Net%20herlands&sessionId=281511&skin=hudoc-en>

<sup>139</sup> Article 356 of the CPC.

<sup>140</sup> Article 358 of the CPC.

<sup>141</sup> Article 349 of the CPC.

<sup>142</sup> Article 349 of the CPC.

<sup>143</sup> Article 349 of the CPC.

<sup>144</sup> Article 32 of the CPC.

purportedly saw the defendants participating in the disturbance and carrying out particular acts to incite the crowd was so discredited in the course of cross-examination that it could not possibly be relied upon to found the convictions. In its judgment, the court failed to consider the overwhelming number of previous inconsistent statements that the majority of the prosecution witnesses had made in the course of the investigation. So many of the prosecution witnesses gave evidence which was wholly inconsistent with the accounts that they had previously given, that it became impossible to view the evidence of the witnesses implicating the defendants as credible. Conversely, the court failed to attach sufficient importance to the evidence that was called on behalf of the defendants, dismissing the evidence of many of the defence witnesses on spurious and inadequate grounds.

The approach of the court to the evidence of defence witnesses was flawed and demonstrated a biased and prejudiced attitude against them. The evidence presented by defence witnesses was crucial to the defence case and yet, in its judgment, the court dealt with the evidence in a superficial manner and rejected the evidence of all the witnesses without giving any separate or detailed analysis of the grounds for rejecting the evidence of each witness. A more detailed analysis of these issues as they pertain to Trial Group 15 is found in Annex 4.

## PART III

### 6. CONCLUSIONS AND RECOMMENDATIONS

It was apparent from the OSCE monitoring that many of the trials of persons accused of various offences relating to the post-election violence in Azerbaijan were not in compliance with a variety of the government of Azerbaijan's OSCE commitments on human rights and rule of law. Some aspects of the conduct of the trials and treatment of the defendants, moreover, appeared clearly to contravene Azerbaijan's legal obligations under the International Covenant on Civil and Political Rights, the UN Convention Against Torture, the European Convention on Human Rights, and the European Convention on the Prevention of Torture. Of particular concern are pervasive, credible allegations from the accused and from trial witnesses of torture and other ill-treatment. Deficiencies were particularly apparent in regard to Trial Group 15, which was monitored and assessed for the OSCE by an independent international expert.

The Criminal Procedure Code of Azerbaijan does provide the basis for trials in accord with international standards, to the extent that the laws are implemented fully, impartially and fairly. Unfortunately, this was not always the case in regard to the trials in question.

The following recommendations have been compiled based on the findings documented in this report. They begin with general recommendations and then follow the same order as the structure of the report, beginning with the initial point of detention through various aspects of the trial.

#### General recommendations for immediate action

- The appropriate authorities should cancel or commute the sentences imposed on all persons as a result of trials that fell substantially short of Azerbaijan's international commitments and obligations fair trials. Persons convicted in such trials should be released or retried.
- The authorities should undertake a prompt, serious, wide-ranging and independent investigation of all allegations of torture and mistreatment. Any individual found responsible for perpetrating or instigating acts of torture or ill treatment should be prosecuted.
- The authorities should undertake a prompt, serious, wide-ranging and independent investigation of all allegations of the excessive use of force by security forces on 15 and 16 October 2003, and during the detentions of suspects during the following days. The authorities should take all necessary steps to ensure that law enforcement measures are commensurate with circumstances and do not exceed the needs of enforcement, and law enforcement personnel are held accountable for excesses.
- The authorities should ensure that victims of torture, ill treatment or excessive use of force are able to seek compensation. The authorities should also ensure that all those who are granted compensation by court also receive such.
- The authorities should establish an independent body with authority to receive and investigate future complaints of torture, ill treatment or excessive use of force by law enforcement officials, and initiate criminal and disciplinary proceedings against those found responsible.
- The government of Azerbaijan should consider inviting the UN Special Rapporteur on torture and other cruel, inhuman, degrading treatment or punishment to visit and to offer his advice and recommendations.

## Right to legal counsel

- A lawyer should be guaranteed to all detained persons immediately after their arrest or detention and during all investigative measures in accordance with the Criminal Procedure Code.
- Those detainees who do not have a lawyer should be provided with a list from which they can choose, and subsequently meet with, a lawyer in accordance with the Criminal Procedure Code.
- Those detainees who cannot afford a lawyer should be ensured access to and be able to consult with a duty lawyer at the State's expense in accordance with the Criminal Procedure Code.
- Defence counsel should not be required to present letters from the investigators/prosecution in order to gain access to their clients.
- The authorities should respect the confidentiality of the communications and consultations between lawyers and their clients. The right to confidential communication with a lawyer applies to all people, including those who are arrested or detained, whether or not charged with a criminal offence.
- The authorities should ensure access by defendants and their defence counsel to all information, documents and evidence that might help prepare the case, exonerate them or, if necessary, mitigate a penalty.
- Steps should be taken to ensure that defence counsel always have full access to the court file and receive copies of all documents contained therein.
- The Bar Association and the government of Azerbaijan should ensure that all necessary measures are taken to create an independent, self-governing professional association in a transparent and inclusive process. Admission to the association should be open, transparent and fair, offering equal opportunities to all lawyers. To this end, the recommendations of the Conference on Reform of the Bar, set out in Annex 6, should be implemented expeditiously.

## Torture and ill-treatment and the right not to be compelled to confess guilt

- The authorities should adhere to their OSCE commitments and other international obligations regarding the question of torture and in particular to take into consideration the recommendations coming out of the Supplementary Human Dimension Meeting in November 2003.<sup>145</sup>
- The government should consider signing and ratifying the Optional Protocol to the UN Convention Against Torture.
- The authorities should ensure that everyone receives a medical checkup from the moment of detention and that doctors are always available at the request of the detainee. The government is encouraged to adopt a law that would regulate this issue.
- The authorities should ensure full compliance with rules and procedures on the conduct of interrogations. Further, Azerbaijan should keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture.
- The authorities should ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. This prohibition should be included in the rules or instructions issued in regard to the duties and functions of any such person.

146 <http://www.osce.org/odihr/meetings/2003/shdm/november/>



## **Prohibition of the use of evidence obtained by torture or other ill treatment**

- Courts should ensure absolute respect for the principle of the inadmissibility of evidence obtained by torture.
- The general prohibition against evidence obtained by torture or other ill-treatment in the Criminal Procedure Code should be accompanied by clear, effective and mandatory rules on the procedure for investigating allegations of torture or other ill-treatment and the exclusion of any evidence obtained by such means.

## **Right of people in custody to information**

- The authorities should clearly instruct law enforcement officials to uniformly implement the provisions of the Criminal Procedure Code to require that all persons are informed of the reasons for their arrest at the time of their arrest, informed and receive written notification of their rights from the outset of detention and are informed of any criminal charges immediately after they are brought.

## **Right to notify others of arrest**

- The authorities should instruct law enforcement officials to uniformly implement the Criminal Procedure Code to ensure that all detainees have the right to inform relatives of their detention immediately after their arrest.

## **Right to be brought promptly before a judge**

- The presumption should be firmly against pre-trial detention. Pre-trial detention should only be used in the event of evidence regarding one of the special reasons for remand in custody.
- Defendants should not spend more than 72 hours in temporary detention facilities, in accordance with the Criminal Procedure Code.

## **Right to adequate time and facilities to prepare a defence**

- Defence counsel should not be required to present letters from the investigators/prosecution in order to gain access to their clients.
- The authorities should respect the confidentiality of the communications and consultations between lawyers and their clients. The right to confidential communication with a lawyer applies to all people, including those who are arrested or detained, whether or not charged with a criminal offence.

## **Right to a public hearing**

- Adequate facilities at court centres and in court rooms should be used in order to facilitate proper observation by the public of trials, particularly in the cases where a high level of public interest can be expected.
- Information about the time and venue of hearings should be made easily available to the public, either by posting the information at the court or on a court webpage.
- Proper access to the court hearing should be given to all members of the public. No person should



be excluded from the court hearing unless there are proper and sufficient grounds to believe that the administration of justice would be prejudiced by their admission.

- The authorities are urged to reinforce impartiality and transparency in the procedure of nomination of judges.

### **Right to a fair hearing**

- The Ministry of Justice should reconsider the use of metal cages in criminal hearings, particularly in the case of non-violent crimes as they may be seen as violating the presumption of innocence.
- The authorities should ensure access by defendants and their defence counsel to all information, documents and evidence that might help prepare the case, exonerate them or, if necessary, mitigate a penalty.

### **Right to a public and reasoned judgment**

- Courts should ensure that judgments are read out fully in court and that the defendants receive a copy of the judgment no later than three days following the announcement of the judgment.
- Courts should ensure that judgments are fully reasoned and based only upon evidence that was lawfully obtained and heard before the court, and should respect the presumption of innocence.

## ANNEX 1: TABLE OF VERDICTS AND SENTENCES<sup>147</sup>

NAME	FIRST HEARING ON THE MERITS	PRESIDING JUDGE	DATE OF JUDGEMENT	SENTENCE	PLEA	APPEAL
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### **TRIAL GROUP 1**

1. Kerimov Chingiz Huseyngulu, Musavat	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	3 years imprisonment	Not guilty	Dismissed
2. Aliyev Baba Bahman, n/party/affil/	30 January 2004	Sadraddin Hajiyev, CSC4	March 2004	Suspended sentence of 5 years imprisonment	Partly guilty	None
3. Jafarov Yunis Hikmet, PPFA-cl.	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	Suspended sentence of 5 years imprisonment	Partly guilty	None
4. Huseynov Fizuli Alesger, Musavat	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	5 years imprisonment	Not guilty	Dismissed
5. Mammadov Maarif Isah, Musavat	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed
6. Abbasli Yalchin Nasrulla, Musavat	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	4.5 years imprisonment	Not guilty	Dismissed
7. Gahramanov Shamsi Teymur, ADP	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	Suspended sentence of 5 years imprisonment	Partly guilty	None
8. Hasanov Salahaddin Yunis, Musavat	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	None
9. Sharifov Shikhali Sharif, PPFA-cl.	30 January 2004	Sadraddin Hajiyev, CSC	4 March 2004	Suspended sentence of 4.5 years imprisonment	Not guilty	None

<sup>147</sup> The following abbreviations are used in Annex One. ADP (Azerbaijan Democratic Party), CSC (Court for Serious Crimes), n/party/affil (No party affiliation), PPFA-cl (Popular Front of Azerbaijan Reformers), SDC (Sabayil District Court).

## TRIAL GROUP 2

10. Suleymanov Bayram Dilman, n/party/affil.	30 January 2004	Faig Gasimov, CSC	5 March 2004	5 years imprisonment	Not guilty	Reduction of sentence from 5 to 3 years imprisonment.
11. Abbasov Vusal Lazim, n/party/affil.	30 January 2004	Faig Gasimov, CSC	5 March 2004	3 years imprisonment	Partly guilty	Dismissed
12. Axundov Babek Fuad, ADP	30 January 2004	Faig Gasimov, CSC	5 March 2004	Suspended sentence of 5 years imprisonment	Partly guilty	None
13. Abilov Ramiz Hamza Musavat	30 January 2004	Faig Gasimov, CSC	5 March 2004	Suspended sentence of 5 years imprisonment	Partly guilty	None
14. Ibrahimov Azer Ibrahim, n/ party/affil.	30 January 2004	Faig Gasimov, CSC	5 March 2004	Suspended sentence of 4.5 years imprisonment	Partly guilty	None
15. Huseynov Mansur Tofiq, Azerbaijan People Party	30 January 2004	Faig Gasimov, CSC	5 March 2004	5 years imprisonment	Not guilty	Reduction of sentence from 5 to 4 years imprisonment.
16. Khalilov Ruslan Qachay, n/party/affil.	30 January 2004	Faig Gasimov, CSC	5 March 2004	Suspended sentence of 4.5 years imprisonment	Partly guilty	None
17. Mehdiyev Turan Agali, n/party/affil.	30 January 2004	Faig Gasimov, CSC	4 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	None

## TRIAL GROUP 3

18. Hasanov Sharif Saleh, National Democratic Party	30 January 2004	Rashid Maharramli, CSC	4 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	None
19. Gojayev Shahin Mahammad, Musavat	30 January 2004	Rashid Maharramli, CSC	4 March 2004	4 years imprisonment	Not guilty	Dismissed

20. Ibrahimov Namig Adil, n/ party/affil.	30 January 2004	Rashid Maharramli, CSC	4 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	None
21. Mahharamov Algayit Valiyar, n/party/affil.	30 January 2004	Rashid Maharramli, CSC	4 March 2004	3 years imprisonment	Not guilty	Dismissed
22. Ahmadov Anvar Mammed, Musavat	30 January 2004	Rashid Maharramli, CSC	4 March 2004	3 years limitation of liberty <sup>148</sup>	Not guilty	None
23. Mammadov Orudj Ali, Musavat	30 January 2004	Rashid Maharramli, CSC	4 March 2004	Suspended sentence of 3 years imprisonment	Not guilty	Dismissed
24. Guliyev Ramiz Mirza, Musavat	30 January 2004	Rashid Maharramli, CSC	4 March 2004	5 years imprisonment	Not guilty	Dismissed

#### **TRIAL GROUP 4**

25. Rustamov Kanan Akber, n/p/affil.	6 February 2004	Tofik Pashayev, CSC	9 March 2004	5 years imprisonment	Not guilty	Dismissed
26. Safiyev Garay Yagub, Musavat	6 February 2004	Tofik Pashayev, CSC	9 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	None
27. Shafiyev Vagif Guleyxar, n/p/affil.	6 February 2004	Tofik Pashayev, CSC	9 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	None
28. Ahmadov Zaur Mahammad, n/p/affil.	6 February 2004	Tofik Pashayev, CSC	9 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	Dismissed
29. Gafarov Yusif Sadig, Musavat	6 February 2004	Tofik Pashayev, CSC	9 March 2004	Suspended sentence of 5 years imprisonment	Not guilty	None

<sup>148</sup> Limitation of liberty is defined in Article 53 of the Criminal Code:  
53.1. Limitation of liberty implicates holding convicts, who reached 18 years of age before the delivery of the guilty verdict, in special institutions without isolating them from society but under supervision.  
53.2 Limitation of liberty is imposed for a period  
53.2.1. from 1 to 3 years on people having no previous criminal record and convicted for intentional committing a crime;  
53.2.2. from 1 to 5 years to people convicted for unintentional committing a crime;  
53.3. Limitation of liberty can be imposed for a shorter period than 1 year when it is imposed in substitution of a public or corrective labour punishment.

30. Hasanov Baxtiyar Hidayat, n/party/affil.	6 February 2004	Tofik Pashayev, CSC	9 March 2004	Suspended sentence of 5 years imprisonment	Partly guilty	None
31. Orudjev Tavakkul Fayzali, Musavat	6 February 2004	Tofik Pashayev, CSC	9 March 2004	Suspended sentence of 5 years imprisonment	Partly guilty	None
32. Mehdiyev Xasi Bahlul, n/p/affil.	6 February 2004	Tofik Pashayev, CSC	9 March 2004	6 years imprisonment	Not guilty	Dismissed

### **TRIAL GROUP 5**

33. Nureddinov Nazim Ismayil, Musavat	13 February 2004	Abid Abdinbeyov, CSC	5 March 2004	Suspended sentence of 4.5 years imprisonment	Not guilty	None
34. Dashdamirov Sadig Sabir, Musavat	13 February 2004	Abid Abdinbeyov, CSC	5 March 2004	4.5 years imprisonment	Not guilty	Dismissed
35. Yusubov Farhad Ahad, Musavat	13 February 2004	Abid Abdinbeyov, CSC	5 March 2004	3 years limitation of liberty	Not guilty	None
36. Yusufov Yagub Seyfal, PFFA	13 February 2004	Abid Abdinbeyov, CSC	5 March 2004	Suspended sentence of 4.5 years imprisonment	Not guilty	None
37. Samedov Adil Nadir, n/p/affil.	13 February 2004	Abid Abdinbeyov, CSC	5 March 2004	Suspended sentence of 4.5 years imprisonment	Not guilty	None
38. Aljanov Asim Alafsar, Musavat	13 February 2004	Abid Abdinbeyov, CSC	5 March 2004	Suspended sentence of 4.5 years imprisonment	Not guilty	None
39. Tagiyev Azer Aliyar n/p/affil.	13 February 2004	Abid Abdinbeyov, CSC	5 March 2004	Suspended sentence of 4.5 years imprisonment	Partly guilty	None

**TRIAL GROUP 6**

40. Ahmedov Oktay Heydar, Musavat	16 February 2004	Anvar Seyidov, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None
41. Aslanov Jeyhun Ramazan, n/p/affil.	16 February 2004	Anvar Seyidov, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None
42. Shirinov Yusif Mirzali, n/party/affil.	16 February 2004	Anvar Seyidov, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None
43. Hacıyev Saday Safa, Musavat	16 February 2004	Anvar Seyidov, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed
44. Jalilov Ehtiram Jalil, NDP	16 February 2004	Anvar Seyidov, CSC	24 March	3 years imprisonment	Not guilty	Dismissed
45. Mammedov Aligul Sharafaddin, NDP	16 February 2004	Anvar Seyidov, CSC	24 March	3 years imprisonment	Not guilty	Dismissed
46. Mammedov Tariyel Ganimet, n/party/affil.	16 February 2004	Anvar Seyidov, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None
47. Xeyrullayev Magsud Kamil, n/p/affil.	16 February 2004	Anvar Seyidov, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None

**TRIAL GROUP 7**

48. Dashdamirli Samid Nuru, Musavat	20 February 2004	Ali Seyfalliyev, CSC	15 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed
49. Farzani Arifa Nasib, n/p/affil.	20 February 2004	Ali Seyfalliyev, CSC	15 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed

50. Farzani Akif Asif, n/p/affil.	20 February 2004	Ali Seyfalliyev, CSC	15 March	4.5 years imprisonment	Not guilty	Reduction of sentence to 2 years imprisonment.
51. Aliyev Zaman Azizaga, n/p/affil.	20 February 2004	Ali Seyfalliyev, CSC	15 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed
52. Dadashov Sadi Tofiq, n/p/affil.	20 February 2004	Ali Seyfalliyev, CSC	15 March	4.5 years imprisonment	Not guilty	Reduction of sentence to 2 years imprisonment.
53. Mammadov Nizami Agamehdi, n/p/affil.	20 February 2004	Ali Seyfalliyev, CSC	15 March	4.5 years imprisonment	Not guilty	Reduction of sentence to 2 years imprisonment.
54. Mammadov Elsever Pasha, n/p/affil.	20 February 2004	Ali Seyfalliyev, CSC	15 March	5 years imprisonment	Not guilty	None
55. Abbasov Emiraga Musa, Musavat	20 February 2004	Ali Seyfalliyev, CSC	15 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None

### **TRIAL GROUP 8**

56. Asadbeyli Bahruz Sabir, Musavat	25 February 2004	Azer Orudjev, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed
57. Hamidov Shirali Pasha, Musavat	25 February 2004	Azer Orudjev, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed
58. Huseynli Emin Huseynaga, Musavat	25 February 2004	Azer Orudjev, CSC	24 March	3 years imprisonment	Not guilty	Reduction of sentence to 2 years imprisonment.
59. Mammedov Hasan Xansuvar, Musavat	25 February 2004	Azer Orudjev, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed
60. Mammedov Elshad Eyvaz, n/party/affil.	25 February 2004	Azer Orudjev, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	Dismissed



61. Mammedov Elshan Ali, PPFA-cl	25 February 2004	Azer Orudjev, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None
62. Aliyev Saleh Ahmedali, n/party/affil.	25 February 2004	Azer Orudjev, CSC	24 March	3 years imprisonment	Not guilty	Reduction of sentence to 1 year imprisonment.
63. Sanullayev Ulvi Azimulla, n/party/affil.	25 February 2004	Azer Orudjev, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None
64. Abbasov Ayat Davud, PPFA-cl.	25 February 2004	Azer Orudjev, CSC	24 March	Suspended sentence of 4.5 years imprisonment	Not guilty	None

### **TRIAL GROUP 9**

65. Huseynov Ilgar Mazahir, Musavat	23 February 2004	Vekil Shukurov, CSC	19 March	Suspended sentence of 5 years imprisonment	Partly guilty	None
66. Axundov Agakarim Abdulrahim, PPFA-cl.	23 February 2004	Vekil Shukurov, CSC	19 March	3 years imprisonment	Not guilty	Dismissed
67. Aslanov Rasul Gurban, Musavat	23 February 2004	Vekil Shukurov, CSC	19 March	3 years imprisonment	Not guilty	Reduction of sentence to 2 years imprisonment
68. Gubadov Xagani Balaxan, ADP	23 February 2004	Vekil Shukurov, CSC	19 March	Suspended sentence of 5 years imprisonment	Not guilty	None
69. Mammedov Orxan Murshud, n/party/affil.	23 February 2004	Vekil Shukurov, CSC	19 March	Suspended sentence of 5 years imprisonment	Not guilty	None
70. Xhalilov Goshgar Sabir, n/party/affil.	23 February 2004	Vekil Shukurov, CSC	19 March	Suspended sentence of 5 years imprisonment	Not guilty	None

71. Gahramanov Xayyam Adil, n/party/affil.	23 February 2004	Vekil Shukurov, CSC	19 March	Suspended sentence of 5 years imprisonment	Not guilty	None
72. Yunusov Turan Muslum, n/party/affil.	23 February 2004	Vekil Shukurov, CSC	19 March	3 years imprisonment	Not guilty	Reduction of sentence to 2 years imprisonment

### **TRIAL GROUP 10**

73. Bayramov Elxan Shofiq, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4,5 years imprisonment	Not guilty	No info. (i.e. it is not clear whether appealed or not)
74. Charchili Ramil Firdovsi, n/party/affil	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
75. Ismayilov Mahir Zakir, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	2 years imprisonment	Not guilty	Dismissed
76. Ismayilov Zakir Safar, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
77. Mammedov Mushfig Mammadov, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	3 years imprisonment	Not guilty	No info.
78. Shirinxub Yavar Hamid, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
79. Kazimov Nudret Rzali, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
80. Gadirli Namig Bulud, n/p/affil.	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.

81. Sultanov Vidadi Mahammed, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
82. Muzefferov Mezahir Sulduz, Musavat	23 February 2004	Nushaba Agayeva, CSC	26 March	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.

### **TRIAL GROUP 11**

83. Jafarli Yashar Musa, n/p/affil.	9 March 2004	Rasim Sadixov, CSC	9 March	Suspended sentence of 5 years imprisonment	Not guilty	Dismissed
84. Nasirov Shaban Faxraddin, Musavat	9 March 2004	Rasim Sadixov, CSC	9 March	4.5 years imprisonment	Not guilty	Dismissed
85. Abdullayev Elchin Logman PFPA	9 March 2004	Rasim Sadixov, CSC	9 March	Suspended sentence of 5 years imprisonment	Not guilty	None
86. Abdullayev Elxan Sardar, Musavat	9 March 2004	Rasim Sadixov, CSC	9 March	Suspended sentence of 5 years imprisonment	Not guilty	None
87. Abdullayev Elxan Savalan, n/p/affil	9 March 2004	Rasim Sadixov, CSC	9 March	Suspended sentence of 5 years imprisonment	Not guilty	Dismissed
88. Miralamov Rahib Eldar, Musavat	9 March 2004	Rasim Sadixov, CSC	9 March	Suspended sentence of 5 years imprisonment	Not guilty	Dismissed
89. Huseynov Vagif Isag, n/p/affil.	9 March 2004	Rasim Sadixov, CSC	9 March	3 years limitation of liberty	Not guilty	None
90. Huseynov Adil Chodar, Azerbaijan People Party	9 March 2004	Rasim Sadixov, CSC	9 March	3 years limitation of liberty	Not guilty	Dismissed

## TRIAL GROUP 12

91. Mammadov Sabit Malihakmed, n/p/affil.	11 March 2004	Alim Namazov, SDC	26 March	Suspended sentence of 3.5 years imprisonment	Not guilty	None
92. Bahshaliyev Sovdumali Agabala, Musavat	11 March 2004	Alim Namazov, SDC	26 March	Suspended sentence of 2 years imprisonment	Not guilty	None
93. Babayev Fariz Fazil, Musavat	11 March 2004	Alim Namazov, SDC	26 March	2.5 years imprisonment	Not guilty	Dismissed
94. Tagiyev Eldar Gulbala, NDP	11 March 2004	Alim Namazov, SDC	26 March	Suspended sentence of 3.5 years imprisonment	Not guilty	None
95. Agasiyev Ali Abulfat, n/p/affil.	11 March 2004	Alim Namazov, SDC	26 March	Suspended sentence of 3.5 years imprisonment	Not guilty	None
96. Ziyadov Elchin Ajdar, Musavat	11 March 2004	Alim Namazov, SDC	26 March	3.5 years imprisonment	Not guilty	Dismissed
97. Alizadeh Nidjat Intigam, n/p/affil.	11 March 2004	Alim Namazov, SDC	26 March	Suspended sentence of 3.5 years imprisonment	Not guilty	None
98. Sharifov Natig Agamamed , n/p/affil.	11 March 2004	Alim Namazov, SDC	26 March	Suspended sentence of 3.5 months imprisonment	Not guilty	None
99. Hashimov Hashim Yasaf, n/p/affil.	11 March 2004	Alim Namazov, SDC	26 March	Suspended sentence of 3.5 years imprisonment	Not guilty	None

## TRIAL GROUP 13

100. Allahverdiyev Ilgar Ibrahim, n/p/affil.	24 March 2004	Eynulla Veliyev	2 April	Suspended sentence of 5 years imprisonment	Not guilty	Dismissed
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101. Kerimov Natig Alovset, n/p/affil.	24 March 2004	Eynulla Veliyev	2 April	Suspended sentence of 5 years imprisonment	Not guilty	Dismissed
102. Babayev Alem Aminaga, n/p/affil.	24 March 2004	Eynulla Veliyev	2 April	4.5 years imprisonment	Not guilty	Dismissed
103. Aydin Nurmammad, n/p/affil.	24 March 2004	Eynulla Veliyev	2 April	Suspended sentence of 5 years imprisonment	Not guilty	None
104. Valiyev Sakit Shakar, Musavat	24 March 2004	Eynulla Veliyev	2 April	3 years imprisonment	Not guilty	Dismissed
105. Gasimbeyli Murad Eltogrulovich, n/p/affil.	24 March 2004	Eynulla Veliyev	2 April	Suspended sentence of 5 years imprisonment	Partly guilty	None
106. Shamxalov Zohrab Mahammad, Musavat	24 March 2004	Eynulla Veliyev	2 April	Suspended sentence of 5 years imprisonment	Not guilty	None
107. Mahmudov Ilgar Mehman, Musavat	24 March 2004	Eynulla Veliyev	2 April	Suspended sentence of 5 years imprisonment	Not guilty	None
108. Aliyev Adalat Asgar	24 March 2004	Eynulla Veliyev	2 April	Suspended sentence of 5 years imprisonment	Not guilty	None

#### **TRIAL GROUP 14**

109. Azizov Nizami Zeynalabid, Musavat	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 5 years imprisonment	Not guilty	Dismissed
110. Ismayilov Sadig Elman, n/p/affil.	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
111. Behbudov Alman Idare, n/p/affil.	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.

112. Hasanov Etibar Maharram, n/p/affil.	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
113. Ahmadov Hijran Baxtiyyar, ADP	24 March 2004	Imameli Askerov	2 April	3.5 years imprisonment	Not guilty	No info.
114. Mammadov Ilham Zargam, n/p/affil.	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
115. Maharramov Vahid Xalfali, n/p/affil.	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 4.5 years imprisonment	Partly guilty	No info.
116. Karimov Elshan Karim, n/p/affil.	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.
117. Mammadov Haji Safar, n/p/affil.	24 March 2004	Imameli Askerov	2 April	3 years imprisonment	Not guilty	Dismissed
118. Abbasov Shakir Gurshad, PFPA	24 March 2004	Imameli Askerov	2 April	Suspended sentence of 4.5 years imprisonment	Not guilty	No info.

### **TRIAL GROUP 15**

119. Rauf Arifoglu Chief Editor, Yeni Musavat Newspaper		Ibayev Ziyad	22 October	5 years imprisonment	Not guilty	Dismissed
120. Arif Hajili, Musavat		Ibayev Ziyad	22 October	5 years imprisonment	Not guilty	Dismissed
121. Ibrahim Ibrahimli, Musavat		Ibayev Ziyad	22 October	3 years imprisonment	Not guilty	Dismissed
122. Panah Huseynov, People Party		Ibayev Ziyad	22 October	4 years 6 months imprisonment	Not guilty	Dismissed
123. Etimad Asadov Karabakh, War Invalids Society		Ibayev Ziyad	22 October	2 years 6 months imprisonment	Not guilty	Dismissed

124. Sardar Jalologlu, ADP		Ibayev Ziyad	22 October	4 years 6 months imprisonment	Not guilty	Dismissed
125. Iqbal Agazade, Umid Party		Ibayev Ziyad	22 October	3 years 6 months imprisonment	Not guilty	Dismissed



## ANNEX 2: TEXT OF ADMINISTRATIVE AND CRIMINAL CHARGES

### 1. ADMINISTRATIVE CHARGES

#### **Article 310 of the Code on Administrative Offences of 2000**

##### **Intentional disobedience to the lawful demands of a police officer or a member of the military**

310.1 Intentional disobedience to the lawful demands of a police officer or a member of the military fulfilling their duties of protecting public order is punishable by a fine of 20-25 conditional financial units, or if these measures are not sufficient taking into account the circumstances of the case and the personality of the offender, by administrative detention of up to 15 days.

### 2. CRIMINAL CHARGES

#### **Article 220 of the Criminal Code of 2000**

##### **Mass disturbances**

220.1. Organization of mass disturbances accompanied by violent actions, pogroms, arson, destruction of property, use of firearms and explosives, and armed resistance to state agents, or participation in such disturbances, is punishable by a term of imprisonment from 4 to 12 years.

220.2. Appealing for active disobedience to lawful orders of state agents and for committing mass disturbances, as well as for using violence against citizens, is punishable by limitation of liberty for up to 3 years, or a term of imprisonment of up to 3 years.

#### **Article 233 of the Criminal Code**

##### **Organization of or active participation in actions causing breach of public order**

Organization of actions that cause a serious breach of public order, or connected with disobedience to lawful orders of state agents, or causing breach of regular work of public transport and entities, committed by a group of persons, as well as active participation in such actions is punishable by correctional labour of up to 2 years, or limitation of liberty for the same duration, or a term of imprisonment of up to 3 years.

#### **Article 315 of the Criminal Code**

##### **Resistance to or acts of violence against a state agent**

315.1. Use of violence and resistance accompanied by violent acts not threatening life or health towards a state agent in connection with fulfillment of his/her official duties, or use of violence not threatening life or health towards his/her close relatives, as well as threat of committing such violence is punishable by a term of imprisonment term of up to 3 years.

315.2. Committing violence threatening life or health towards the persons mentioned in Article 315.1 of this Code is punished by a term of imprisonment from 3 to 7 years.

## **ANNEX 3: SELECTED INTERNATIONAL STANDARDS**

### ***OSCE COPENHAGEN DOCUMENT***

#### **Paragraph 12**

The participating States, wishing to ensure greater transparency in the implementation of the commitments undertaken in the Vienna Concluding Document under the heading of the human dimension of the CSCE, decide to accept as a confidence-building measure the presence of observers sent by participating States and representatives of non-governmental organizations and other interested persons at proceedings before courts as provided for in national legislation and international law; it is understood that proceedings may only be held in camera in the circumstances prescribed by law and consistent with obligations under international law and international commitments.

### ***EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS***

#### **Article 3**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **Article 5**

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

## **Article 6**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

## ***INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS***

### **Article 7**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

### **Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

### **Article 14**

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a

fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

## ***UNITED NATIONS CONVENTION AGAINST TORTURE***

### **Article 12**

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

### **Article 13**

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any

territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

#### **Article 14**

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

#### **Article 15**

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

#### **Article 16**

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment. [...]

## ANNEX 4: DETAILED OBSERVATIONS FROM TRIAL GROUP 15

In addition to monitoring of all 15 Trial Groups by OSCE-trained trial monitors, an international expert, Paul Garlick, Queen's Counsel, Judge (United Kingdom), observed the final set of trials which began on 7 May. These trials, referred to in the text or this report as Trial Group 15, included the most prominent opposition figures charged with criminal offences relating to the post-election violence. The essential findings from Trial Group 15 are included in the text of this report. This annex provides additional, more detailed information, observations and analysis of Trial Group 15, in particular, allegations of torture and ill treatment, analysis of how the court dealt with those allegations, and an analysis of the court's failure to give a reasoned judgment. Annex 6 provides copies of questionnaires prepared by the international expert and completed by defence counsel of Trial Group 15.

### 1. Allegations of torture and ill treatment made by the defendants

The following is a summary of the allegations made by both the defendants and witnesses in trial group 15 of incidents of torture. It is significant that, notwithstanding their accounts of having been tortured, the prosecution nevertheless sought to rely upon those parts of the evidence of the witnesses given in the pre-trial investigation which purported to incriminate the defendants in the alleged offences. The summary has been prepared from transcripts (in Azeri) of tape recordings of the evidence given in court, which have been translated into English by an OSCE translator. In order to give the reader an opportunity to assess properly the nature and gravity of the allegations, those parts of the summaries relating to alleged incidents of torture have been prepared using direct speech, as near as may as it was given to the court.

#### Iqbal AGAZADE

"On 17 October around 4:00 p.m., about 100 employees of the Department for the Fight Against Organized Crime (DFOC) in masks, armed with machine-guns, attacked my house. Despite the fact that there were little children and elderly people in the house they opened fire into the air and ordered everyone to lie down. They started beating people. They brutally beat journalists, my father-in-law, my brother, the husband of my sister, other relatives, and my advocate. They put me into the car and insults and beatings continued in the car. [...] When we reached the yard of DFOC they took me out of the car, insulted me, beat me and swore at me. They dragged me along the ground for five meters. My brother and relatives were also brought there. I was placed on the ground and when I tried to lift my head one of the employees put his foot on my head and I could not move. They were filming it. They took me to the fourth floor to the office of Vaqif MAMMADOV and for two hours six-seven people in masks beat me one by one. [...] My advocate, Mubariz QARAYEV, was also arrested and I called another advocate, Osman KAZIMOV, to the Investigation Department where I was taken around 6:30 p.m. I could not move because of pain in my breast and legs. I had a medical check-up there and then was taken back to DFOC. [...]"

"In the basement of DFOC, my brother, cousin, the husband of my sister, my advocate and other relatives were tortured."

"On 17 October, when they were beating me in the office of Vaqif MAMMADOV, I was on foot. This time Orudj ZALOV, the deputy minister of internal affairs, opened the door and said 'why do you beat him on foot, put him on the ground.' After this they continued beating me on the ground."

“Around 1:00 at night I was taken to the office of Vaqif MAMMADOV there I was beaten till 4:00 a.m. without a break.”

“On 18 October, after 7:00, I was taken again to the office of Vaqif MAMMADOV where I was beaten for several hours and then was taken to the basement. There they were giving pieces of ice in a towel and insisted that I put them on the place of bruises. [...] They did this in order to hide the traces of torture. They threatened me with launching a criminal case against my brother if I did not write what they said in a written statement.”

“I refused and on 19 October they launched fabricated a criminal case against my brother and Narimanov District Court applied 2 months preventive measure of arrest against my brother.”

“They also threatened me with the arrest of my sister. After all this I gave the testimony in the way they needed. However, on 23 March 2004, I sent a letter to the Prosecutor General and retracted the testimonies given on 20 October and 4 November 2003. I also addressed the court regarding torture facts and this case is now in the appeal court.”

*[Note: A video recording of the interrogation of Iqbal AGAZADE was played in the courtroom. On the tape Vaqif MAMMADOV, deputy chief of DFOC, was seen to be playing with a pistol in his hand. At the same time, traces of what appeared to be beatings on the face of Mr. AGAZADE, as well as swelling under his eyes, were visible.]*

## **Sardar JALOLOGLU**

“About 20 men in masks with submachine guns entered the yard of my house. Some of them were kicking the door and demanding to open it. Others aimed their submachine guns from the neighbouring balcony. Three of them broke the window and got into the flat when I was trying to open the door. [...] They put me on the ground and handcuffed me. My sons and daughter were shocked. [...] This scene will always agonize me. I saw that two of them directed their submachine guns towards my children and one directed towards me. [...] They put me into the car and one of them put his legs on my shoulders as I was forced to sit on the floor of the car. [...] They insulted me and beat me all the way long. [...] In the yard of DFOC they started dragging me on the wet asphalt. And all this was filmed by employees of DFOC. [...] When I was brought to the office of Vaqif MAMMADOV, he started swearing at me and put his pistol on the desk. [...] They took me to the walking area of the isolator and eight men followed me. They surrounded me and started swearing. [...] One of them started beating me to the liver region of my body. Then they left. [...] I was brought to the cell. And Hazi GULUZDEH, the member of Musavat, and Arif KHALILOV, husband of Iqbal’s sister, who were in the same cell told me how they were tortured.”

“They were taking us nude for interrogation.”

“On 19 October around 6:00 p.m., they took me to the office of Samed DJAFAROV, deputy of V.MAMMADOV. [...] He asked me questions and I refused to answer. He called two guys and they started beating me on the feet with batons. Samed said they will first torture me and if I don’t speak then they will apply immoral acts towards me. [...] This process continued till about 10:00 p.m. The bottoms of my feet were seriously injured. I was unable to move without the help of someone. [...] Vaqif came in and he became unhappy that they did not make me speak and he instructed to use immoral behaviour against me if I continue like this. [...]”



"In the morning of 20 October, the representatives of the Red Cross came and wanted to meet with me. One of the employees of the DFOC said that if I tell the Red Cross what happened to me then it would be worse for me. I described what they did to me in detail to the representative of the Red Cross and showed them my injuries. [...] When I asked my cellmates why they do not want the Red Cross to know about their tortures they said that they were told if they speak then they will be raped."

"In our cell there was a small window towards the back yard of the DFOC. Every night they were bringing there new people and beating and torturing them. It was impossible to sleep because of their screams."

"I was kept there till 22 October and till this day they never permitted me to meet with my advocate. For four days once a day in the morning they were providing hot tea in a small cup. And only once in four days they gave a part of the food that was brought by my family. Every day they were forcing me to sign some documents. For four days they never took us to the fresh air. They did not even open the window in the cell. We were forced to drink the water from the cell tap."

"I was then transferred to Bailov Prison where I was kept for 40 days in solitary confinement. In the prison the Committee Against Torture of the Council of Europe visited me and took records of my body injuries. I still feel pain in my right foot. Medical evidence concerning my injuries has been falsified. I am now preparing a case before the European Court of Human Rights concerning the incidents of torture."

## **Panah HUSEYNOV**

"I do not want to talk about tortures. But the handcuffs went deep into my arms. They did not let my advocate meet with me. [...] I have never seen such cruelty. [...] Vaqif MAMMADOV told me that I would die in two months. He applied blows to my kidneys and chest. [...] They said 15 relatives of mine were arrested, including my brother and cousin. They started mentioning the name of my son."

Question by prosecutor: "You said you were tortured. Can you give us the names of the torturers?"

Panah: "In the cell of DFOC, Aydin, the bodyguard of Isa GAMBAR, and Omar, Avar minority representative, were together with me. And they told about it to international organizations and gave details about me. I repeat that those who tortured me are not important people and I do not want to tell their names. However, I want to mention that tortures against me were ordered by the ruling party, namely Ilham ALIYEV, Ramil USUBOV<sup>148</sup> and Ramiz MEHDIYEV.<sup>149</sup> Ilham ALIYEV, Ramil USUBOV<sup>150</sup> and Ramiz MEHDIYEV.<sup>151</sup> These people are organizers of tortures."

Question by Rauf ARIFOFLU [*Note: Under Azerbaijani law, where defendants are both accused of being organisers of the same offence, the law entitles them to ask each other questions on substance with a view to disclosing the factual circumstances of the case*]: "Can the way you were treated in DFOC be described as a torture?"

Panah: "Yes, I was tortured."

[...]

<sup>148</sup> The Minister of Internal Affairs of Azerbaijan.

<sup>149</sup> The Head of the Presidential Apparatus of Azerbaijan.

<sup>150</sup> The Minister of Internal Affairs of Azerbaijan.

<sup>151</sup> The Head of the Presidential Apparatus of Azerbaijan.

Question by Rauf ARIFOFLU: "Did anyone from the Red Cross meet with you there?"

Panah: "Yes, her name was Nelly."

Question by Rauf ARIFOFLU: "Did you give the information to her?"

Panah: "I briefed her, answered positively to the question of tortures, but did not tell the details of torture."

Question by Rauf ARIFOFLU: "Did you have any information about how others were treated there? For instance, about Iqbal, Ibrahim, Sardar and Sulhaddin AKBAR."

Panah: "We were told about horrific things. [...] The most terrible things happened with Iqbal. They were particularly cruel with regard to Iqbal. They also told newcomers about what they did to others. This was also a tool of pressure. [...] Aydin, the bodyguard of Isa Gambar, had bruises all over the body. He is a boxer and was quite a strong man but I did not recognize him when I came to the cell. He was sitting in the corner and was whispering to me when saying something. [...] They were bringing soup to guys and forcing them to eat it without a spoon, with their mouths."

Iqbal Agazade (intervened): "I also observed such behaviour."

Panah: "Aydin told me that they forced him to bark and filmed it and then demonstrated to him (to Aydin)."

Question by Arif HAJILI: "I know you will laugh but still, did they provide you with newspaper and magazines?"

Panah: "No. They even did not let my advocate see me."

Question by Rauf ARIFOFLU: "I have the information that they put a submachine gun towards you. Were there any bullets or magazine?"

Panah: "I do not want to talk about the details of tortures. I can not say whether there was a bullet in the submachine gun or not. But there was a submachine gun."

## **Ibrahim IBRAHILI**

"I was taken to the Department for the Fight Against Organized Crime and was put in the basement."

"I was sitting on the chair and they handcuffed my hands behind my back and started beating me with batons. Then they placed me on the ground and one of them starting beating me on my feet with a baton. Kamil SADADDINOV was beating me in the face. [...] They beat me on the feet five times with breaks. Then they brought me to the cell. There were four men in the cell, two relatives of Iqbal, the driver of Isa GAMBAR and another person. There was no place to sleep in that cell."

"When I was brought to the court for determination of the preventive measure of arrest, Samad DJAFAROV hit me with the butt of a submachine gun in the corridor of the court. After the court hearing I was taken back to DFOC."

“At 1:00 a.m. to 2:00 a.m. at night they took me to the office of Vilayet EYVAZOV where he insulted me and instructed others to beat me with batons. [...] When we were in the corridor Kamil kicked the door and my finger got stuck in the doorway and my finger is not functioning still. I lost consciousness.”

“My family was not informed about me and my condition. Therefore when speaking on the TV, I said I was not tortured in order to assuage my family.”

### **Etimad ASADOV**

“I was detained on 12 October and was taken to the Department for the Fight Against Organized Crime where I was subjected to humiliations and tortures. I gave all the details to the International Committee of the Red Cross and Human Rights Watch. I was arrested on 17 October. The testimony I signed during the preliminary investigation was typed by the investigator and I signed it without reading it.”

#### **Allegations of torture and ill treatment made by the witnesses:**

### **Kanan RUSTAMOV**

*[Note: This witness was brought as a witness of the prosecutor.]*

“I was an election observer in Binaqadi District on 15 October 2003. [...]”

“I came to the Musavat Office on the night of 15 October to submit election records but the approaches to the Musavat office were surrounded by police and I could not get to it and so went home. On 16 October, I tried in vain to enter Musavat headquarters again. Around 2:00 p.m., I saw the demonstrators and joined them in the square. On my way I saw Rauf Arifoglu and stayed near him, hoping that police would not hurt him near the journalist. When Rauf went up to the tribune I went home.”

“I was arrested. A member of my family was detained and when I came they released him.”

“I was taken from the street and during my arrest they put a black sack on my head and placed me in the car. They beat me about the head with a metallic article and I lost consciousness.”

“They threw water on me to wake me up and started beating me having said ‘you are also one of the organizers of mass disorder.’ They said I would have to make a speech on TV against Isa Gambar and R. Arifoglu. [...]. They beat me so much that I pissed blood. I frequently lost consciousness and they used injections or water to make me regain my consciousness.[...] They beat me on the soles of my feet with batons. Then they proposed again that I should make the speech, and when I refused four of them attacked me.”

“I agreed to speak on TV in order to gain some time while they brought the journalist. But as soon as I agreed, they opened the door and brought in the cameraman of AZTV, the state run TV channel. When I tried to leave the room to wash my face from the blood I could not stand on my feet and fell, and by chance I broke the camera. Then I was brought to the Investigation Department for Serious Crimes of the Prosecutor’s Office (DGC) where I was also beaten, threatened and it was proposed to me that I should speak against Rauf.”

“They said: ‘if you don’t sign the necessary documents we will bring your mother here, and do you know what will happen then?’”

"The investigator's name was Valeh and this person also threatened me and proposed that I should speak against Rauf. He played the tape record of the conversation between Rauf and I and asked questions. Then I was taken to the yard where, with the help of soldiers, cleaning personnel also beat me having known that I was a member of the Musavat Party. Then I was taken to the cell #5 of 'Gorotdel' and when my cellmate found out that I belonged to Musavat he also beat me. The next morning I was brought to DGC where I again refused to sign the documents."

"Soon they brought my brother whose hands were handcuffed and placed him on the chair and told me to think properly. After this I signed the document and wrote that I had written it personally. I thought I saved my brother and if there would be a democratic court they would understand me if I explained the situation. But, despite the fact that I told the court everything in my trial, nobody paid attention. On 8th of January, I sent a letter to the Prosecutor General and I stated that I retracted my testimonies because they were obtained through torture. Despite this I was convicted on the basis of the old testimony and I was sentenced to five years."

"My father was dismissed from his work where he worked since 1992."

*[Note: The witness was then questioned by the prosecutor]:*

Question by prosecutor: "Did you hear those who made speeches from the tribune?"

Answer by the witness: "I only heard the speech of Ibrahim. He said don't follow the provocation, there are some people among us who confront the police and throws stones, don't let this happen. [...]"

Question by prosecutor: "Did Rauf make a speech on the tribune?"

Answer: "No. [...]"

Question by Rauf ARIFOGLU: "[...] On 25 December from Bailov prison you said that you partially refute your previous testimony and not the whole testimony, what was the reason?"

Answer by the witness: "They arrested my brother again and therefore I could not refute the whole testimony. But I have sent a letter to Prosecutor General on 8 January."

Question by Panah HUSEYNOV: "Did you receive any reply to your letter and was there any examination of those facts?"

Answer by the witness: "No."

## **Mushfiq MAMMADOV**

*[Note: This witness is a member of Musavat Party and he was on Azadliq Square during the events of 16 October 2003. On the day of elections he was a member of the District Election Commission].*

"They caught me on the Square but they released me because there was no room in the bus. Next morning around 7:00 a.m., the police came to me and said that there were some documents to be signed in the Commission. But instead they took me to the police station #30. [...] They started beating me. [...] When I went to the toilet to wash the blood from my face, Vuqar, the police officer, came in,

took me by the hair and beat my face against the mirror. Then he took out his pistol and directed to my mouth and said that I should write what the boss says to. Fuad MAMMADOV, the chief of this police station, is a cousin of Ziya MAMMADOV, the minister of transport. [...] They wanted me to write that Arif and Rauf made speeches there, Isa Gambar did not manage to come and that the election was democratic. [...] Then Vuqar put my two fingers in the doorway and broke them. Only then I agreed to write that the elections were democratic but I said I would not lie about those individuals. Then I was brought to F. MAMMADOV who brought all 32 police officers and ordered them to beat me and added that those who didn't beat hard enough would be dismissed."

"I was then taken to 'Gorotdel' where they continued to torture me."

"In 'Gorotdel' they tortured me every day. They placed me on the chair and beat on the end of my foot. For a while they brought pen-like article and gave electricity current to my foot, it hurt my head. [...] I saw the advocate appointed by the state only two and half months later."

*[Note: The witness was then questioned by the prosecutor]:*

Question by prosecutor BAYRAMOV: "You said police beat you, what about the prosecutor's office?"

Answer: "N. Qasimov slapped me in the face, insulted me."

Question by prosecutor BAYRAMOV: "Can you give the names of those who beat you forcing to give the testimony?"

Answer: "Dj. MAMMADOV, Rashid ALLAHVERDIYEV, two persons both called Azers, Vuqar, Sadraddin, F.MAMMADOV, Zohrab, Zafar and Mahmoud."

Question by prosecutor BAYRAMOV: "Were they questioned in the court?"

Answer: "They came and said they did not beat anyone."

Question by prosecutor BAYRAMOV: "Did you have injures on your body?"

Answer: "Yes, they even took my photo twice; you can get them from the case file."

Rauf Arifoglu (intervened): "These photos are not in the case file; they would not keep them. [...]"

Witness: "On 24 December, an expert came to see me in Bailov prison. He did not hold any expertise and wrote the opinion. There is a photograph taken in Bailov on 19 October where you can see my condition. But they wrote that I was completely healthy."

Question by Panah: "Mushfiq, were there any pressures on you during your interrogation in Prosecutor's Office?"

Answer: "Yes, they insulted me, beat. N. QASIMOV slapped me five times in the face and insulted me. Then Djumshud QASIMOV beat me with a baton right in the office of the investigator. [...] Panah, I did not give that testimony, it was done by Djumshud QASIMOV the chief of criminal-search department."

## Nahayat QASIMOVA

*[Note: This witness is a member of Musavat Party and was an observer during the elections. She was on the Square on 16 October. She was first considered as a victim and interrogated in the hospital. Then she was interrogated as a witness.]*

"I was beaten by people in black masks and lost consciousness and found myself the next day in the hospital named after M. NAGIYEV."

Question by Panah: "Where were you interrogated first?"

Answer: "In the hospital."

"I stayed in the hospital for three days and then went home. I was in bad shape; my eyes were full of blood. The morning after I returned home, police officers came together with Djumshud QASIMOV the investigator. They said I had to go with them. I told them that I could not move, I cried and asked them not to take me. They did not pay attention to this and said that they would pick me up at 11:00 a.m. [...] They took me to the police station in Hovsan settlement where they kept me for seven-eight hours. I feel embarrassed to tell about what happened there. Djumshud took me to the room and started to obtain testimony using bad language against me. [...] When I told him about what happened he shouted and said that I will not write it in this way and that I should write what he tells me to. He said at minimum I will get 12 years of imprisonment. I got scared and I wrote what he said."

Question by prosecutor: "Did investigator N. QASIMOV apply any physical pressure on you during the interrogation?"

Answer: "Not physical but psychological. He shouted at me and said, 'what where you doing there? You will be imprisoned.'"

Question by prosecutor: "Which parts of your testimony *[Note: given during the preliminary investigation]* do not belong to you?"

Answer: "Everything except my bibliographic data is false, it was written by force. What hurts me the most is that Djumshud forced me to write that I saw how wooden and metallic articles were brought to Musavat Party's Office. [...]"

## Nahid MAMMADOV

"I was arrested on 15 October and kept in custody for nine days and then released when I agreed to write the testimony that is in the materials of the case."

"In my testimony it is said that I allegedly received the instruction from Rauf to attack the Central Election Commission."

*[Note: The witness addressed Rauf with the following words: "Rauf, they are putting pressure on my father."]*

Question by prosecutor BAYRAMOV: "Was there any pressure on you during the interrogation?"

Answer: "Not when writing the testimony but two guys came to me beforehand. They came around 3:00 at night and they were drunk. H. QAMBAROV told me that if I do not give the testimony I will be imprisoned."

"I was invited to the Prosecutor's Office before coming to testify in the court. I asked the judge to ensure my security. I know that I will be arrested after leaving this court room. [...] I addressed three embassies for asylum. [...] I am ashamed that under force I gave testimony against these persons."

Question by Rauf: "Was there pressure on you during the interrogation in Binaqadi?"

Answer: "Yes. My father is a Musavatist and was an observer in the elections. Four days later he came there to search for me. [...] They handcuffed him and kept him in detention for five days without any legal grounds. On that day my mother was paralyzed. [...] Two guys tortured me."

*[Note: The witness took 80,000 manats from his pocket and showing this to the judge he said that this money was given to him yesterday in the prosecutor's office. After the hearing, the witness told journalists that he was offered a trip to Antalya (Turkey) by the Prosecutor's Office as well as two thousand dollars. According to the witness, he was summoned to the prosecutor's office eight times and he was threatened. The witness said that he and his advocate were received by the Baku Office of Council of Europe and the information was passed on to Strasbourg.]*

## **Novhal NAGIYEV**

"I was detained on 18 October and sentenced to 15 days of arrest for insulting the head of a police station, even though I hadn't said anything to him. I was released on the eighth day. I retract the testimony I gave during the preliminary investigation."

Questioned:

Witness: "They were forcing me to give testimony against Rauf. To say that he was distributing stones and pieces of wood. Most of the testimony is false. I did not see any of the defendants on the square."

"I had a skin disease on my leg and they even did not give me soap to wash it or water. They threatened me with 14 years of imprisonment."

"I did not write that testimony. I simply put my signature at the bottom. They forced me to do it."

## **Shamsi QAHRAMANOV**

"I am a member of the Azerbaijan Democratic Party (ADP). I was an observer during the election of 15 October 2004. On 16 October I was on the square. The same day I left for my home town, Agstafa. On 3rd of November I was brought to Baku and at 3:00 at night I was taken to Police Station #9. I was beaten there because I did not write what they wanted."

"I was forced to sign what they wrote. Then I was brought to the Prosecutor's Office. When I told the truth there they said that they would have to send me back to the police station. I was taken back to the police station and tortures renewed. The next day they brought photos of my mother, sister, father and brother and proposed me to choose between either them or to write what they said. I signed what they said."



“They threatened me with a bottle [Note: This is a common method of threatening rape] and threatened my mother and sister.”

“The police tried to use pressure and beatings to obtain information from me against Sardar JALALOGLU.”

Question by prosecutor: “Whom did you see on the tribune?”

Answer: “Arif, Ibrahim and Iqbal. [...]”

Question by prosecutor: “What is false and what is true in the testimony?”

Answer: “Almost everything is false. [...]”

“When I told the investigator that I was tortured, he did not pay attention to this and sent me back to the police station #9. There again I was tortured. [...]”

“Gunfire and gas was used by soldiers on the square. Iqbal did not make a speech from the tribune. He just waved his hand. About 30 dogs were used during the attack on the crowd. I retract my testimony given during the preliminary investigation because it was obtained under pressure. I was punched mainly to my ribs and legs.”

[Note: The testimony of the witness was filmed and this film was demonstrated in the courtroom. But, according to the file, the film was so dark that it was not possible to discern whether there were any signs of injuries on the face of the witness, nor was it easy to determine the identity of the person.]

“Two guys who tortured me were in another corner of the room during the filming and they do not appear in the film. I was kept for four days without food and water and was tortured.”

[Note: The witness asked that the women who were present to leave the courtroom so that he could give the details of the tortures.]

## **Shefa SAFAROV**

“I suffer from asthma. On 16 October, I came to Musavat Party Offices to submit the copy of the election records. When I saw that the crowd was moving towards Azadliq Square, I joined them. On the square I was beaten by state forces and people in black masks. From the square, I was brought to Sabail District Police Station. And there again I was beaten. Then the court ordered that I be detained for ten days. On the seventh day I was released and after ten days I was summoned to the Prosecutor’s Office.”

Questioned by the prosecutor:

“They put pressure on me during the interrogation. [...] They brought one document and said that I need to sign it and if I didn’t then the beatings would commence again.”

Question by prosecutor: “SAFAROV, did you write the testimony during the preliminary investigation yourself?”

Answer: “No, the investigator wrote it.”

Question by prosecutor: “Did you read it?”

Answer: ‘No, my illness became aggravated. I could not breathe. I was in such a condition that I signed it without reading. I can not even read in the Latin alphabet. [...]’

“Last week I was summoned to the Prosecutor’s Office and the investigator Rasim HADJIYEV (also Mustajab later on) told me that I had to confirm in the court my testimony from the preliminary investigation. [...]”

“I retract the testimony I gave during the preliminary investigation. It was obtained under pressure.”

“At the police station I concealed the fact that I was a member of the Musavat Party because I feared that that would result in more intense beating. I was already beaten more because I originate from Fizuli city, because that is where Iqbal comes from.”

## 2. Analysis of the allegations of torture and ill treatment in Trial Group 15

In its judgment, the court dismissed the allegations of torture, both in respect of the alleged incidents of torture of the defendants and of the witnesses.

In relation to witness **Kanan RUSTAMOV**, the judgment of the court refers to an earlier judgment, dated 5 March, of the Court for Grave Crimes given in respect of Kanan. That court declared that it investigated impartially, thoroughly and in detail Kanan’s allegations that he had been forced to give testimony, and found them to be false. The earlier judgment refers to the letter from temporary detention facility no. 1 sent to the court on 19 February 2004, according to which K. A. Rustamov was medically examined on 26 October 2003 when brought to detention facility no. 1 and there were no signs of injuries on his body. According to this letter, on 19 December 2003 his lungs were examined and no pathology was found on his lungs. Relying upon this earlier judgment, the court for Trial Group 15 stated that it was obvious from the earlier judgment that Kanan’s torture allegations were thoroughly investigated, and having regard to the abovementioned documents, and having watched a video record of Kanan’s pre-trial interrogation held with participation of his lawyer, the earlier court established that Kanan gave testimony without any outside pressure, freely, without using any pre-prepared text, that he had no signs of injury on his face, or hands, moreover during the interrogation he was intensively gesticulating with his thumb. The Trial Group 15 court referred to the earlier judgment and stated that the previous court had assessed thoroughly Kanan’s allegations concerning torture in pre-trial detention and held them to be untrue. The court stated that the earlier judgment was still in force and, for those reasons, in accordance with articles 65 and 142 of the Criminal Procedure Code of the Republic of Azerbaijan they accepted the earlier judgment as “unquestioned evidence having pre-judicial meaning.”

The rejection by the Trial Group 15 court of the allegations of torture of the witness Kanan amounted to an abdication of the duties of the court to investigate the matter thoroughly. No independent medical examination of the witness had been carried out at the time of the alleged torture of the witness. The Trial Group 15 court adopted the finding of the previous court, without assessing whether the facts of the alleged torture had been investigated properly, or at all. Unquestioned adherence to the findings of a previous court, where no satisfactory investigation can be seen to have taken place by the previous

court, falls short of discharging the duties of trial judges to carry out a thorough and effective investigation into incidents of torture. The fact that Kanan was no longer a defendant and, therefore, no longer had any self-interest in lying to the court was disregarded by the present court. Furthermore, the Trial Group 15 court failed to consider the evidence anew and in the light of all the other evidence in the case before it, the preponderance of which leaned heavily in support of the allegations of torture. No reasonable tribunal should have rejected the evidence of Kanan without a further detailed examination of the circumstances of the allegations of torture. For the court to fall back upon the doctrine of issue estoppel (i.e., regarding itself as being bound by the previous findings of another court) with regard to allegations of torture amounts to a disregard of the obligation to investigate allegations of torture, in the context of the case before it. The court's failure to view the evidence given by Kanan in the context of all the other evidence in the Trial Group 15 case represented an artificial compartmentalization; the court's rejection of the evidence of Kanan could be seen as unwarranted and unfair. Moreover, at no time during his evidence was it suggested to him that he was lying in respect of his evidence of torture. The result of this failure was the witness was never given an opportunity of defending his allegations of torture and dealing with any adverse inferences that the court might find against him. Whilst it is accepted that the criminal process in Azerbaijan may not, generally, require a prosecutor to challenge the evidence of a witness that is not accepted by the prosecution, different considerations apply when the court is exercising its obligations to investigate allegations of torture. In such an investigation, if it is to be said that a witness is not telling the truth about such allegations, it should be incumbent upon the prosecutor (or the court) to put that fact to the witness, so as to allow the witness to respond to the suggestion that he is lying.

Similar considerations apply also to the evidence of **Gojajev Shahin MAHAMMAD**. At his own trial and in the Trial Group 15 hearing, Shahin renounced his pre-trial testimony and stated that he had been forced to give it. He alleged that that he had been tortured and that the torture signs still remained on his body. According to Shahin, his rib and a tooth were broken. Again, the Trial Group 15 court rejected the evidence of Shahin, largely on the basis of the findings of the court which convicted him, without viewing the evidence afresh, in the light of the circumstances of the case before it. The Trial Group 15 court relied upon the medical evidence which had been adduced at Shahin's trial as to the nature of the injuries that he was found to have suffered. However, again, this evidence was not independent expert medical evidence and Shahin was never afforded the opportunity of a medical examination by a doctor of his own choosing. It became clear during the Trial Group 15 trial that the medical examinations that had been ordered were conducted on the basis of very narrow instructions given by the court, often being narrowed to confirming the possibility that injuries of the nature found on a defendant could have been sustained in the course of the violence on either the 15th or 16th October 2003. Accordingly, the medical evidence could not be conclusive in excluding the possibility that injuries were caused by incidents of torture after a suspect was taken into custody.

Again, similar considerations apply to the witness **Mushvig MAMMADOV**. Mushvig, both at his own trial and at the Trial Group 15 hearing, renounced his pre-trial testimony and alleged that he gave it under physical and psychological duress. Again, the Trial Group 15 court relied upon the judgment of the previous court and, without any renewed or meaningful investigation, held that the allegations of torture had been impartially and thoroughly investigated and assessed by the previous court. And again, no re-appraisal of the evidence in the light of the circumstances of the Trial Group 15 case, or the fact that Mushvig no longer had any prospective advantage in lying to the court, took place. In short, the Trial Group 15 court was content to hide behind the decision of the previous court, and failed properly to assess the evidence in the light of the new circumstances of the trial before it.

Similar considerations also apply to the other witnesses and to the defendants who gave evidence in the Trial Group 15 trial of allegations of torture. In relying on the findings of previous courts, without considering the whole of the evidence in the case before it, the court fell short of its obligations in connection with carrying out a thorough and effective investigation into incidents of torture. The Trial Group 15 court failed to take into account the good character of the defendants and their demeanour when determining the issues in relation to the alleged incidents of torture. The accumulation of evidence in the Trial Group 15 case of incidents of torture, particularly at the Head Department for the Fight Against Organized Crime of the Ministry of Interior, would have caused any reasonable and fair tribunal to carry out a most thorough and effective investigation into the incidents of torture. Equally seriously, the Trial Group 15 court failed to apply the correct evidentiary tests to the allegations of torture. The issue of torture had been plainly raised both by witnesses and by defendants and, accordingly, the correct approach was for the burden of proof to shift to the prosecution to prove beyond reasonable doubt that the evidence (whether incriminating statements against a defendant by a witness, or a confession by a defendant) was not obtained by torture and similar ill-treatment.

Accordingly, the approach that the court took to the question of the determination of the allegations of torture was flawed. Further, on a fair and proper view of all the evidence, no reasonable and fair tribunal could have come to the conclusions that the Trial Group 15 court came to in dismissing each and every allegation of torture raised by the witnesses and the defendants. For this reason alone, the convictions of the defendants in Trial Group 15 cannot be regarded as being sound.

One further aspect of the conduct of the court in relation to determining the allegations of torture needs to be addressed. At an early stage in the trial it became clear that serious allegations of torture were being made by witnesses and the defendants. However, the court declined to carry out any proper investigation into the issues that had been raised by the witnesses until long after the prosecution had ended its case. Despite repeated requests by the defendants and their advocates to carry out a detailed investigation of the allegations of torture when they were first raised by the witnesses and defendants, the court declined to do so. It was not until many weeks after the allegations of torture were raised by witnesses that the court finally agreed to call the alleged perpetrators of the incidents of torture for examination by the court and parties. This delay made it quite impossible for the court properly to assess the veracity of the witnesses who had made the allegations of incidents of torture against the veracity of the alleged perpetrators of the torture. Once the issue of incidents of torture was raised, not only by the defendants but also by witness upon whom the prosecution heavily relied to prove the case against the defendants, the court should, forthwith, have conducted a thorough and effective investigation into the allegations, hearing all the relevant witnesses contemporaneously, so as to allow the court to assess in a proper and judicial way their evidence. The failure by the court to do so is, arguably, a violation of Article 13 of the Convention Against Torture, which provides that States shall ensure that individuals who allege that they have been subjected to torture shall have the right to complain to and have his case promptly and impartially examined by its competent authorities.

### **3. Right to a reasoned judgment**

The Criminal Procedure Code states that a court's judgment should be lawful and well-founded. As noted in the text of this report (Chapter 5.M.), in order for a judgment to be considered lawful, it must fulfil the requirements of the Constitution and of the Criminal Procedure Code of Azerbaijan. In particular, in accordance with the Criminal Procedure Code, four requirements must be satisfied in order for a judgment to be considered well-founded or reasoned:

- It must be based upon sufficient evidence;<sup>152</sup>
- It must be based solely on evidence that was examined during the court investigation;<sup>153</sup>
- It must be consistent with the evidence that was examined during the court investigation;<sup>154</sup>  
and
- It must be based solely on evidence that was secured and examined with the equal participation of both parties.<sup>155</sup>

In respect of Trial Group 15, OSCE observers and the independent expert assessed that there was not sufficient evidence upon which the court could base a reasoned conclusion that it was certain the defendants organized, orchestrated or were parties to the disorder which took place on the 16 October 2003. The evidence of witnesses for the prosecution so poor and so discredited in the trial that no reasonable tribunal could have relied upon it to found the convictions. In its judgment, the court failed to consider the overwhelming number of previous inconsistent statements given by the majority of the prosecution witnesses, making it impossible to view their evidence against the defendants as credible.

For example, one of the key questions for the court to determine was whether the defendant Igbal AGAZADE made a speech from the tribune in Azadlig Square on 16 October. If the court could not be satisfied about the veracity and accuracy of the prosecution evidence on this question, then the case against this defendant was fundamentally flawed and no reasonable tribunal could have convicted him. One of the witnesses relied upon by the prosecution to prove that Igbal AGAZADE made a speech from the tribune gave evidence to the court that AGAZADE came to the Square from the port side of the Square in a white car.<sup>156</sup> However, a video recording shown to the court made it clear that defendants AGAZADE and Panah HUSEYNOV came to the Square in a black Mercedes car and that the car came from the side of the Square where the Intourist Hotel was and not from the port side.<sup>157</sup> The court failed to give this matter any proper consideration and failed to take it into account when assessing the probative value, if any, that should be attached to the evidence of the witness. In all the evidence in the case, no reasonable tribunal could have been satisfied that the defendants AGAZADE or HUSEYNOV acted in the way suggested by the prosecution.

In respect of the defendant Etimad ASADOV, a witness<sup>158</sup> gave evidence that he saw ASADOV running at the head of the crowd. Yet ASADOV is an amputee and severely disabled; thus, it was highly unlikely that he could have been running in front of the crowd. The same witness had stated in his pre-trial statement that ASADOV was at the tribune, whereas, in his evidence to the court he said that the defendant was not at the tribune. In light of such inconsistencies and on the basis of all the evidence in the case, no reasonable tribunal could have been satisfied that the defendant ASADOV acted in the way suggested by the prosecution.

Many of the witnesses relied upon by the prosecution made pre-trial statements to investigators which were identically worded, and had identical punctuation and typographical errors. This raises serious concern as a clear indication that the investigators were preparing the statements themselves, rather than recording faithfully the evidence of the witness.<sup>159</sup> Another concern was that according to records

<sup>152</sup> Article 349 of the CPC.

<sup>153</sup> Article 349 of the CPC.

<sup>154</sup> Article 349 of the CPC.

<sup>155</sup> Article 32 of the CPC.

<sup>156</sup> The witness Jabrayil Valiyev, a police officer from Binagadi District Police Station.

<sup>157</sup> Another witness relied upon by the prosecution (Naghiyev Vidadi) gave evidence that Igbal Agazade and Panah Huseynov had arrived in the Square in a white "GAZ-24" model motor car. The same witness told the court that when Igbal Agazade and Panah Huseynov arrived at the Square there were very few people in the Square and only 5 or 6 people on the stairs to the Tribune. However, the video recording showed clearly that when the defendants arrived in the Square there were already many demonstrators and a great number of people on the Tribune.

<sup>158</sup> Naghiyev Vidadi.

<sup>159</sup> See for example the evidence of the witnesses Naghiyev Vidadi and Babayev Rasim.

of interrogations, investigators seemed to have interrogated more than one witness at the same time on the same date. Accordingly, this meant that either: (1) the records of interrogation were inaccurate or that they had been falsified; or (2) if the records were correct, that witnesses had been interrogated together, in breach of the Criminal Procedure Code. Although no satisfactory explanation was given for this, the court failed to carry out any adequate investigation of this matter and failed to give it any proper consideration when assessing the probative value of the evidence.

At the request of the defendants, the court summoned a great number of witnesses, all of whom gave evidence which, if accepted, materially assisted the defendants and cast a real doubt on the prosecution case. In its judgment, however, having summarised the evidence of the defence witnesses in a wholly inadequate manner, the court dismissed their evidence in its entirety by stating as follows:

*“The court, having examined the testimony of the witnesses heard at the request of the defendants, established that these persons, as was indicated above, were members or employees of the parties presided over by the defendants and were working with the defendants.*

*Moreover, some of them gave contradictory statements.*

*Thus, on the one hand Nijat HUSEYNOV in reply to the questions said that people speaking on the tribune were not calling people to violence and on the other hand he stated that he was 70-100 meters far from the tribune and did not hear speeches and was not even able to see who was speaking.*

*Naila YAGUBOVA stated that she was alone at the square while Elshad PASHAYEV said that Naila was together with him.*

*Moreover, the circumstances described by them were refuted by reliable, detailed and mutually complimentary evidence referred to above in the judgement: the testimony of victims and witnesses, a videotape, the material evidence and the court judgements in force.*

*For this reason the Court holds their testimony to be ungrounded.*

*It is obvious from the court file, from the numerous victims’ and witnesses’ testimony and the video cassettes, recorded by a number of TV channels in the course of the 16 October events, and watched by the court as a material evidence, that the facts described by them are ungrounded.”*

This brief judgment failed to attach sufficient importance to the evidence on behalf of the defendants, dismissing it on spurious and inadequate grounds. The approach of the court to the evidence of defence witnesses was flawed and demonstrated a biased and prejudiced attitude against them. The evidence presented by defence witnesses was crucial to the defence case and yet, in its judgment, the court dealt with the evidence in a superficial manner and rejected the evidence of all the witnesses without giving any separate or detailed analysis of the grounds for rejecting the evidence of each witness.



## ANNEX 5: COMPLETED QUESTIONNAIRES FROM TRIAL GROUP 15<sup>160</sup>

<b>Name of defendant</b>	<b>HAJILI (f/n) ARIF (s/o) MUSTAFA</b>
<b>Name of defence lawyer</b>	OSMAN (f/n) KAZIMOV
<b>Charges against defendant</b>	The Criminal Code of the Republic of Azerbaijan: Articles 220.1 (mass riots), 315.2 (use of violence dangerous for life and health against public officers carrying out their service duties).
<b>Date, place and time of arrest</b>	On 24 October 2003 he came to the Ministry of Internal Affairs of the Republic of Azerbaijan and was arrested in the presence of the Minister of Internal Affairs and the General Public Prosecutor of the Republic of Azerbaijan.
<b>Date and time of intimation of the fact and place of detention to third parties (relatives, lawyers)</b>	24 October 2003.
<b>Date, place and time of first interrogations</b>	24 October 2003. Grave Crimes Investigation Department of the General Public Prosecutor's Office of the Republic of Azerbaijan.
<b>Summary of any alleged violations of human rights, in particular torture or inhumane or degrading treatment</b>	<p><u>Note:</u> A. Hajili has been transferred to one-man cell since 9 June 2004.</p> <ul style="list-style-type: none"> <li>– district court decision on detention on remand was not based upon any solid grounds – the investigating body did not submit any primary evidence to court;</li> <li>– failure to bring him before the judge – court issued an arrest warrant for 3 months without participation of Hajili and his advocate;</li> <li>– court prolonged the pre-trial arrest term for another 3 months without any legal grounds;</li> <li>– he was kept in a solitary confinement for 34 days, wasn't provided with paper and pen;</li> <li>– petitions of his lawyers regarding the interrogation by the investigating body of witnesses who would prove his innocence were denied.</li> </ul>
<b>Date, place and time of first access to legal representation</b>	On 27 October 2003 at 16:00 p.m.
<b>Date, place and time of subsequent detentions</b>	On 24 October 2003 he was arrested. On 21 October 2003 Nasimi district court issued illegally (without participation of Hajili and his advocate) an arrest warrant against A. Hajili for a term of 3 months.
<b>Date and place of first appearance before a court to review detention and granting of bail</b>	The Court of Appeal of the Republic of Azerbaijan – 30 October 2003 – rejected.

<sup>160</sup> The template of the questionnaire was developed by the international expert. The information provided therein was provided by the lawyers of the defendants.

<b>Grounds relied upon by prosecution and the court to refuse bail and to continue detention</b>	Taking into consideration the nature, degree of public danger, circumstances of the commission, gravity of the crime. <u>Note:</u> The decision passed by the Court of Appeal enumerates exactly the same grounds.
<b>Date on which new criminal case (#80365) separating the defendants from the rest of the accused in the October events</b>	01 March 2004. <u>Note:</u> Decision on completion of the investigation was made on the same date.
<b>Date on which defendants and their counselors receive materials in the criminal case + brief description of materials served on defence</b>	06 March 2004. 22 volumes of criminal case materials, testimonial evidence, data on caused damage, testimonies of the victims, 22 video cassettes containing repeated frames portraying the events.
<b>Date upon which the bill of indictment is prepared and approved; the case is sent to court + date upon which it was served on the defendants</b>	<ul style="list-style-type: none"> <li>- Confirmed on 22 April 2004,</li> <li>- Sent to the court consideration on 26 April 2004</li> <li>- Submitted on 22 April 2004</li> </ul>
<b>Date of Preparatory session of the court</b>	Started on 07 May 2004
<b>Summary of complaints that defendants have in relation to preparatory session of court. For example any difficulties or disadvantages faced by defence</b>	Utilization of technical means for maintenance of the defence was hindered. For example, video shooting (recording) was illegally prohibited. Copies of decisions were not provided. For example, despite 31 motions of the defence party, only copies of 8 decisions were provided. Motions for familiarization of the accused with the minutes of the trial and for providing him with the case materials were rejected. The advocates were beaten in front of the court building. The Public Prosecutor called the accused persons criminals and was not reprimanded. Despite 300 participants (advocates, victims, the accused party etc.) of the judicial process, it was held in a room designed for 46 persons
<b>Summary of all submissions made by defence and sent to the court (date and summary of nature of submission) and whether dealt with by the court (i.e. any response and ruling by the court)</b>	<ol style="list-style-type: none"> <li>1. Motion for cancellation of criminal prosecution on account of violations of procedural law</li> <li>2. Protests against the judges. For example, a brother of one of the judges is a member of the investigative group. A son of the chairman of the court is employed in subordination to the head of the investigative group who signed the indictment. <ul style="list-style-type: none"> <li>- Rejected.</li> </ul> </li> <li>3. Motion for permission to carry out video recording to prepare the defence. <ul style="list-style-type: none"> <li>- Rejected</li> </ul> </li> <li>4. Motion for replacement of arrest by another form of restrictive measures <ul style="list-style-type: none"> <li>- Rejected</li> </ul> </li> </ol>



	<ol style="list-style-type: none"> <li>5. Motion for inclusion of witnesses offered by the defence party in the list of witnesses in attendance and summons for their appearance. <ul style="list-style-type: none"> <li>- It was postponed for the next stage pursuant to a decision made.</li> </ul> </li> <li>6. A video cassette was submitted by the defence party as evidence at the preparatory hearing. Article 299 CPC provides that the judge must consider this issue at the preparatory hearing and not leave this issue for the next stage of trial. <ul style="list-style-type: none"> <li>- this matter was illegally postponed for the next stage of the examination of the case.</li> <li>- Ground: According to the judge they were not familiar with the contents of this cassette.</li> </ul> </li> <li>7. Reports of international organizations submitted by the defence (such as Organization of Security and Co-operation in Europe, Parliamentary Assembly of Council of Europe, Human Rights Watch etc.) on elections of 15 October 2003. <ul style="list-style-type: none"> <li>- Rejected.</li> </ul> </li> <li>8. Papers on analysis of official reports published by the Central (Main) Election Commission and other election commissions, confirming misrepresentation of the results of elections held on 15 October 2003. <ul style="list-style-type: none"> <li>- Rejected.</li> </ul> </li> <li>9. A newspaper article containing a speech of A. Hajili made by him on Azadlig Square on 16 October 2003. <ul style="list-style-type: none"> <li>- Accepted.</li> </ul> </li> <li>10. A motion requesting a copy of the decision of the Baku Mayor's Office (issued on 16 October 2003) banning demonstrations on the square in front of the Carpet Museum. <ul style="list-style-type: none"> <li>- Rejected.</li> </ul> </li> <li>11. Motion to summon the Head of Baku City Executive Authority, the Minister of Internal Affairs and other officials to appear as witnesses. <ul style="list-style-type: none"> <li>- Rejected.</li> </ul> </li> <li>12. Motion to summon the commanders of military units taking part in events of 15/16 October 2003, to appear as witnesses. <ul style="list-style-type: none"> <li>- Rejected</li> </ul> </li> <li>13. Motion for exclusion of inadmissible evidence. <ul style="list-style-type: none"> <li>- postponed for the next stage.</li> </ul> </li> </ol>
<p><b>Summary of any complaints regarding inadequate facilities for defence to prepare for trial</b></p>	<p>No conditions were provided for joint watching of video tapes together with advocates. Only one copy of all the documents were provided as all the accused were kept in the same cell. His subsequent transfer to one-man cell just before the trial caused obstacles in this regard.</p>
<p><b>Summary of any instances of failure by prosecution to disclose material which would assist the defence</b></p>	

<b>Summary of any other relevant complaints in relation to violations of human rights or fair trial rights</b>	<ul style="list-style-type: none"> <li>– He was transferred to a one-man cell just before the trial of the case.</li> <li>– A great number of the papers submitted as evidence were not accepted.</li> <li>– A list of persons presented by the defence party as witnesses was not accepted.</li> <li>– No copies of a great number of made decisions were provided.</li> <li>– Motions on procedural law violations, also for prohibition against torture were not satisfied.</li> </ul>
<b>Any other relevant remarks that defence wish to draw the attention of ODIHR</b>	We kindly ask the independent lawyer charged by OSCE/ ODIHR in Warsaw to observe the trial until the court passes a judgment as well as to provide International Amnesty in London with a copy of the report made by OSCE on this case.

<b>Name of defendant</b>	<b>ASADOV (f/n) ETIMAD (s/o) SAVALAN</b>
<b>Name of defence lawyer</b>	YAVER (f/n) HUSSEIN (s/o) JAFAR
<b>Charges against defendant</b>	Articles 32.4, 220.1 (Abetting in mass riots) and 32.4, 315.2 (Abetting in use of force against public officer) of the Criminal Code of the Republic of Azerbaijan.
<b>Date, place and time of arrest</b>	The accused person was arrested at the Department for the Fight Against Organized Crime on 17 October 2003 upon appearance when summoned. Upon arrest by administrative means for 10 days, criminal proceedings were instituted against him.
<b>Date and time of intimation of the fact and place of detention to third parties (relatives, lawyers)</b>	His relatives and advocates were not informed about his arrest. On 26 October 2003 the advocate was provided with the possibility to meet with him for the first time. After that the place of his detention was known exactly.
<b>Date, place and time of first interrogations</b>	First interrogation was conducted without participation of his advocate at the Grave Crimes Investigation Department of the General Public Prosecutor's Office of the Republic of Azerbaijan on 20 October 2003.
<b>Summary of any alleged violations of human rights, in particular torture or inhumane or degrading treatment</b>	He was detained and held criminally liable despite absence of primary evidences as well as any evidence at all. He was subjected to physical and psychological pressure despite his disability due to loss of his leg. He was kept in a one-man cell under severe conditions. In a number of cases delivery of parcels for the inmate was refused. E. Asadov went on 5-6 days hunger-strike on two separate occasions protesting against his ill-treatment.
<b>Date, place and time of first access to legal representation</b>	26 October 2003 the advocate met with inmate in the investigative isolation ward for the first time. Therefore the first meeting with the inmate was possible 6 days after the advocate embarked on the proceedings as a defence lawyer.
<b>Date, place and time of subsequent detentions</b>	On 20 October 2003 an arrest warrant for 3 months was issued against him and on 15 January 2004 his arrest was prolonged for 3 months more (until 20 April 2004).

<b>Date and place of first appearance before a court to review detention and granting of bail</b>	All motions made by the defence party for replacement of arrest by another form of restrictive measures were rejected. Such kind of motions were made on 20 October 2003 as well as on 15 January and 25 June 2004. The Court of Appeal of the Republic of Azerbaijan – 30 October 2003 – rejected.
<b>Date on which new criminal case (#80365) separating the defendants from the rest of the accused in the October events</b>	On 01 March 2004 criminal case nr: 80365 was separated from case nr: 80308.
<b>Date on which defendants and their counselors receive materials in the criminal case + brief description of materials served on defence</b>	The defence party became familiar with the criminal case materials in May 2004.
<b>Date upon which the bill of indictment is prepared and approved; the case is sent to court + date upon which it was served on the defendants</b>	On 22 April 2004 the bill of indictment was approved and sent to the Grave Crimes Court of the Republic of Azerbaijan.
<b>Date of Preparatory session of the court</b>	The preparatory session of the court started On 07 May 2004 and lasted until 15 June 2004.
<b>Summary of complaints that defendants have in relation to preparatory session of court. For example any difficulties or disadvantages faced by defence</b>	The defence was denied the use of technical means in the manner allowed for by the law. The advocates were subjected to violence by the police. No measures were taken to provide safety of the advocates.
<b>Summary of all submissions made by defence and sent to the court (date and summary of nature of submission) and whether dealt with by the court (i.e. any response and ruling by the court)</b>	The defence party made about 50 motions. All motions were rejected including the ones for permission to use video recording, interrogation of additional witnesses, providing copies of necessary documents as well as copies of video cassettes. Even copies of decisions made on these motions were not provided.
<b>Summary of any complaints regarding inadequate facilities for defence to prepare for trial</b>	The defence party was able to become familiar with the criminal case materials only after completion of the preliminary investigative proceedings.
<b>Summary of any instances of failure by prosecution to disclose material which would assist the defence</b>	Copies of 22 video cassettes which were prosecution evidence, as well as decisions authorizing interception of telephone conversations. (Only a court can issue a decision on interception, however there were no such court decisions.)

<b>Summary of any other relevant complaints in relation to violations of human rights or fair trial rights</b>	The accused person was subjected to torture and inhuman treatment. He was arrested without any reason. Witnesses, on his behalf and against him, were excluded. No sufficient possibility was provided for the advocate to protect his rights. No permission was granted to use effective means for his legal defence including technical means. All the above mentioned were incompatible with articles 3, 5, 6 (paragraph 3 'b' and 'd') and 13 of the European Convention on Human Rights.
<b>Any other relevant remarks that the defence wish to draw to the attention of ODIHR</b>	The judges, who exam the case, are not independent and they execute political orders of the government. It is implausible that they will examine the case impartially and impose a fair judgment. It is already an obvious fact. Protection of rights and freedoms of the accused persons as well as their release from the custody can be achieved only by the influence of international human rights organizations on the government of the Republic of Azerbaijan.

<b>Name of defendant</b>	<b>IBRAHIMOV (f/n) IBRAHIM (s/o) MASHAHILAL</b>
<b>Name of defence lawyer</b>	HADI (f/n) MIRISMAYIL (s/o) GABIL
<b>Charges against defendant</b>	Initial charge – articles 220.1 and 315.2 of the Criminal Code of the Republic of Azerbaijan. Final (substantive) charge – articles 32.3, 220.1 and 32.3, 315.2 of the Criminal Code of the Republic of Azerbaijan.
<b>Date, place and time of arrest</b>	On 17 October 2003 approximately at 23h00 he was arrested by officers of the Department for the Fight Against Organized Crime of the Ministry of Internal Affairs of the Republic of Azerbaijan at Hidayatzadeh str.53, apt#11, Baku city, where he resided.
<b>Date and time of intimation of the fact and place of detention to third parties (relatives, lawyers)</b>	On 18 October 2003 approximately at 18h00 his advocate – Mr. Hadi Mirismayil was informed about his arrest.
<b>Date, place and time of first interrogations</b>	On 18 October 2003 approximately at 21h00 or 22h00 in the Serious Crimes Investigation Department of the General Public Prosecutor's Office of the Republic of Azerbaijan.
<b>Summary of any alleged violations of human rights, in particular torture or inhumane or degrading treatment</b>	No document was presented when he was arrested. No custody report was drawn up. His arrest wasn't recorded. Rights of the arrested person were not satisfied incompatibly with article 153 of the Criminal Procedural Code of the Republic of Azerbaijan. He was illegally kept in the Department for the Fight Against Organized Crime from 17 to 22 October 2003 incompatibly with article 157.3 of the Criminal Procedural Code. He was subjected to severe physical and moral tortures there. His finger was broken by jamming in the door. His back and kidney were injured as a result of beating. Also injuries were caused to lower parts of his legs from hits by truncheon. No possibility to meet with advocate

	was provided in the Department for the Fight Against Organized Crime from 17 to 22 October 2003.
<b>Date, place and time of first access to legal representation</b>	On 18 October 2003 approximately at 21h00 in the Serious Crimes Investigation Department of the General Public Prosecutor's Office of the Republic of Azerbaijan. No possibility to meet with inmate had been provided until 24 October 2003.
<b>Date, place and time of subsequent detentions</b>	On 18 October 2003 approximately at 21h00, by Nasimi district court
<b>Date and place of first appearance before a court to review detention and granting of bail</b>	12 January 2004, 29 January 2004, 15 January 2004.
<b>Grounds relied upon by prosecution and the court to refuse bail and to continue detention</b>	<ul style="list-style-type: none"> <li>- probability of escaping from the investigation.</li> <li>- nature and gravity of the offence</li> <li>- for conduct of investigation</li> </ul>
<b>Date on which new criminal case (#80365) separating the defendants from the rest of the accused in the October events</b>	On 01 March 2004 this case was separated from case nr: 80308. On 02 March 2004 preliminary investigation was completed.
<b>Date on which defendants and their counselors receive materials in the criminal case + brief description of materials served on defence</b>	Materials of the case were provided by delays from 05 March to 06 April 2004. No opportunity has been provided for advocates including Mr. Hadi Mirismayil to watch the video cassettes concerned. The demonstrative (tangible) evidence was not provided.
<b>Date upon which the bill of indictment is prepared and approved; the case is sent to court + date upon which it was served on the defendants Date of Preparatory session of the court</b>	On 22 April 2004 the indictment was drawn up which was submitted on 26 April 2004.  07 May 2004.
<b>Summary of complaints that defendants have in relation to preparatory session of court. For example any difficulties or disadvantages faced by defence</b>	<ul style="list-style-type: none"> <li>- the court building was surrounded by policemen.</li> <li>- the policemen used force against advocates repeatedly, obstructed entry to the court building.</li> <li>- no copies of decisions made on motions, have been provided. No possibility has been provided to watch the video cassettes concerned.</li> </ul>
<b>Summary of all submissions made by defence and sent to the court (date and summary of nature of submission) and whether dealt with by the court (i.e. any response and ruling by the court)</b>	Motions: <ul style="list-style-type: none"> <li>- for providing the possibility to watch the video cassettes and making copies.</li> <li>- on procedural law violations</li> <li>- for cancellation of crime prosecution</li> <li>- regarding the facts of torture</li> </ul>

	<ul style="list-style-type: none"> <li>- for gaining access to a list of evidence offered by the defence party.</li> <li>- for exclusion of admissible evidence</li> <li>- for providing with copies of decisions</li> <li>- protests against the composition of the court</li> <li>- for familiarization with record of judicial proceedings</li> <li>- for permission for video shooting etc.</li> </ul>
<b>Summary of any complaints regarding inadequate facilities for defence to prepare for trial</b>	<ol style="list-style-type: none"> <li>1) Providing no conditions to watch the video cassettes and no permission to make their copies.</li> <li>2) Providing no copies of the made decisions.</li> <li>3) Providing no permission to become familiar with record of the judicial proceedings.</li> <li>4) Calling the accused persons as criminals, violation of presumption of innocence.</li> </ol>
<b>Summary of any instances of failure by prosecution to disclose material which would assist the defence</b>	<ol style="list-style-type: none"> <li>1) video cassettes.</li> <li>2) copies of the decisions taken.</li> <li>3) records of preparatory and examination sessions of the court etc.</li> </ol> <p>Also: Calling the accused persons “criminals”, violation of presumption of innocence.</p>
<b>Summary of any other relevant complaints in relation to violations of human rights or fair trial rights</b>	<ol style="list-style-type: none"> <li>1) Illegal detention, custody, arrest, tortures, violation of the right to defence.</li> <li>2) Partiality of the court (judges), conduct of closed (non-open) sessions.</li> <li>3) Coming over to the prosecuting side, standing up for prosecution .</li> <li>4) Rejection of all motions made by the defence party.</li> <li>5) Failure to comply with adversary proceedings etc. Any other relevant remarks that defence wish to draw the attention of ODIHR <ul style="list-style-type: none"> <li>- to renew the demands of OSCE and other international organizations before the appropriate authorities of Azerbaijan for providing fair trial.</li> <li>- to provide the appropriate organizations and states with impartial results of monitoring held by representatives of OSCE over the examination of the case.</li> </ul> </li> </ol> <p>Non-compliance with fair trial proceedings by the courts of the Republic of Azerbaijan.</p>

<b>Name of defendant</b>	<b>AGHAZADEH (f/n) IGBAL (s/o) FEHRUZ</b>
<b>Name of defence lawyer</b>	KAZIMOV (f/n) OSMAN (s/o) ALISHIRIN, GARAYEV (f/n) MUBARIZ (s/o) ZULFUGAR
<b>Charges against defendant</b>	Articles 32.3, 220.1 (Master-minding of mass riots) and 32.3, 315.2 (Abetting in maintaining resistance to public officer or use of force against him) of the Criminal Code of the Republic of Azerbaijan.



<b>Date, place and time of arrest</b>	On 17 October 2003 approximately at 16h00 – 17h00 he was arrested by a group of about 100 officers of the Department for the Fight Against Organized Crime of the Ministry of Internal Affairs of the Republic of Azerbaijan in his apartment, being subjected to violence, and was taken to this Department.
<b>Date and time of intimation of the fact and place of detention to third parties (relatives, lawyers)</b>	He was arrested by making sudden invasion without any notice made prior to his arrest and participation of any representative of the public prosecutor's office. His brother, father-in law, cousin, brother-in law as well as his advocate and some journalists were also detained together with him.
<b>Date, place and time of first interrogations</b>	On 17 October 2003 approximately at 19h00 – 21h00. The same day approximately at 23h00 – 24h00 Nasimi district court issued an arrest warrant against him without any grounds.
<b>Summary of any alleged violations of human rights, in particular torture or inhumane or degrading treatment</b>	<p>When he was arrested, himself and members of his family were subjected to beating, insults and threats. Masked and dressed in black officers of the Department for the Fight Against Organized Crime fired sub-machine guns repeatedly without any reason. All people – women, children, journalists and the advocate were made to lie down, dragged on the earth, beaten by butt of weapons and truncheon and kicked.</p> <p>When his brother, father-in-law, cousin, brother-in-law and advocate, detained together with Igbal Aghazadeh, were taken to the Department for the Fight Against Organized Crime, they were subjected to beating, insults, inhuman treatment and threats by weapons.</p> <p>Women and children staying at home were intimidated.</p> <p>Upon delivery to the Department for the Fight Against Organized Crime, those persons were made to lie down, shackled, subjected to beating and mockery by the participation of heads of the Organized Crimes Department. All these scenes were shot by video camera.</p> <p>On the second floor of the Department for the Fight Against Organized Crime Igbal Aghazadeh was subjected to severe tortures, beatings, insults and threats of arrest of his family members and subjection of them to tortures. Some parts of his body were injured.</p> <p>His brother – Ilgar Aghazadeh was also subjected to tortures, beatings and insults for several hours. A firearm was held on him before others. A fabricated criminal case was instituted against him. He was arrested and kept in the Organized Crimes Department being repeatedly subjected to tortures and insults.</p> <p>Upon being subjected to tortures and insults Igbal Aghazadeh was taken to the public prosecutor's office for interrogation.</p> <p>Despite his written statement made to the investigator of all those, no measure was taken. Though an arrest warrant had been issued against him and he had to be taken to the investigative isolation ward, he was taken back to the Organized Crimes Department</p>

	and kept there for 6 days. During that period he was subjected to more severe tortures and inhuman treatment. He was kept hungry and thirsty and threatened with taking of family members of his family to the Department for the Fight Against Organized Crime. Under such kind of threats he was forced to make a speech on ANS TV channel. That statement was illegally broadcast on TV channels, whereas no possibility was provided for him to meet with an advocate when he was being kept in the Department for the Fight Against Organized Crime.
<b>Date, place and time of first access to legal representation</b>	No possibility was provided to meet with advocate for 6 days when he was kept in the Department for the Fight Against Organized Crime. His advocate was also detained and kept in the Department for the Fight Against Organized Crime for 6 days. First meeting took place on 23 October 2003.
<b>Date, place and time of subsequent detentions</b>	On 17 October 2003 approximately at 23h00 – 24h00 Nasimi district court issued an arrest warrant against him without any reason and necessity.
<b>Date and place of first appearance before a court to review detention and granting of bail</b>	<ul style="list-style-type: none"> <li>– On 17 October 2003 – by Nasimi district court;</li> <li>– On 31 October 2003 – by the Court of Appeal of the Republic of Azerbaijan;</li> <li>– On 15 January 2004 – by Nasimi district court;</li> <li>– On 29 January 2004 – by the Court of Appeal of the Republic of Azerbaijan;</li> <li>– On 17 December 2003 – by Nasimi district court.</li> </ul> <p>All decisions made on this matter were illegal, groundless and unfair. Grounds relied upon by prosecution and the court to refuse bail and to continue detention</p> <ul style="list-style-type: none"> <li>– nature and gravity of the crime referred to;</li> <li>– probability to escape from the investigation etc.</li> </ul>
<b>Date on which new criminal case (#80365) separating the defendants from the rest of the accused in the October events</b>	Criminal case nr: 80365 was separated on 01 October 2004. 14 criminal cases had been separated before and 120 persons were illegally condemned.
<b>Date on which defendants and their counselors receive materials in the criminal case + brief description of materials served on defence</b>	<ul style="list-style-type: none"> <li>– On 06 March 2004</li> <li>– 22 volume of case materials – testimonies of witnesses and victims, mainly police officers and soldiers.</li> <li>– 22 pieces of video cassettes.</li> </ul>
<b>Date upon which the bill of indictment is prepared and approved; the case is sent to court + date upon which it was served on the defendants</b>	The bill of indictment was approved on 22 April 2004 and sent to the court on 26 April 2004. The accused persons were provided with it on 22 April 2004.
<b>Date of Preparatory session of the court</b>	The preparatory session started on 12 May 2004 and lasted for about a month and a half by intervals.



<p><b>Summary of complaints that defendants have in relation to preparatory session of court. For example any difficulties or disadvantages faced by defence</b></p>	<ul style="list-style-type: none"> <li>- despite about 250 participants of the judicial process, it is held in a session room designed for 50 persons;</li> <li>- no permission to use video and audio recording during the preparatory session of the court was granted to the defence party without any reasons being given;</li> <li>- all legal and fair motions of the defence party were simply rejected;</li> <li>- the trial is controlled secretly by a monitor installed in the session room;</li> <li>- no copies of decisions made on motions considered by the court at the preparatory session were provided, despite rejection of those motions.</li> </ul>
<p><b>Summary of all submissions made by defence and sent to the court (date and summary of nature of submission) and whether dealt with by the court (i.e. any response and ruling by the court)</b></p>	<ul style="list-style-type: none"> <li>- on 07 May 2004 – a motion for holding the court session in a larger room and providing for video recording;</li> <li>- on 12-13 May 2004 – a motion for replacement of arrest with another form of restrictive measures;</li> <li>- a motion regarding the facts of torture and taking measures against persons involved in procedural law violations;</li> <li>- a motion for dismissal of the criminal case, making persons, who misrepresented facts, criminally liable and compensation.</li> <li>- in June 2004 – for exclusion of inadmissible evidence;</li> <li>- a motion for acceptance of a list of witnesses and calling of additional witnesses.</li> <li>- protests against the trial (judges).</li> </ul>
<p><b>Summary of any complaints regarding inadequate facilities for defence to prepare for trial</b></p>	<p>No sufficient opportunity was made to become familiar with the case materials in detail and to prepare. Some obstacles were created by the investigative body to making copies of the case materials and watching of demonstrative evidence as well as video cassettes. The defence party was not provided with 22 video cassettes for watching, whereas the events of 15-16 October 2003 were recorded in these cassettes from the beginning till the end.</p>
<p><b>Summary of any instances of failure by prosecution to disclose material which would assist the defence</b></p>	<p>The public prosecutor makes obstacles for making copies of the 22 video cassettes and providing the defence party with them. He exerts obvious influence on the court. He violates the presumption of innocence by calling the accused persons criminals, threatens them obviously and declares that statements made in favour of the prosecution will be taken into court's consideration.</p> <p>The court supports the prosecution party. He also calls the accused persons as criminals and threatens them giving no reprimand to the public prosecutor.</p>
<p><b>Summary of any other relevant complaints in relation to violations of human rights or fair trial rights</b></p>	<p>Articles 3, 5, 6 and others of the European Convention on Human Rights and Freedoms are grossly violated:</p> <ul style="list-style-type: none"> <li>- When Igbal Aghazadeh was arrested and kept in the Department for the Fight Against Organized Crime he was</li> </ul>

	<p>subjected to severe tortures and inhuman and degrading treatment (Article 3);</p> <ul style="list-style-type: none"> <li>- He was subjected to unlawful detention and then arrest. He was illegally deprived of his immunity and arrested for his political views as well as for being a deputy presenting the opposition (Article5);</li> <li>- There is no evidence to prove him guilty. He is still under arrest by order;</li> <li>- The court is partial and unfair. It supports obviously the prosecution party, violates legal rights of the accused persons and rejects all legal and fair motions of the defence party, including a motion for acceptance of a list of witnesses and calling of additional witnesses.</li> </ul> <p>The court delays or postpones the proceedings. It makes decisions and appoints time for examination of the case without participation of the accused persons and advocates.</p> <p>A brother of one of the judges was a member of the investigative group which had conducted the preliminary investigation of the case. A son of the chairman of the court is employed in subordination to head of Department of the Public Prosecutor's Office who approved and signed the bill of indictment and he subordinates to him directly.</p>
<p><b>Any other relevant remarks that defence wish to draw the attention of ODIHR</b></p>	<p>Igbal Aghazadeh is a member of the Parliament of the Republic of Azerbaijan, as well as a chief of "Umid" party. He supported candidature of Isa Gambar nominated by opposition bloc "Bizim Azerbaijan" ("Our Azerbaijan") for presidential elections held on 15 October 2003. All these as well as his speeches, made in the parliament, are reason of what himself and his family members were subjected to.</p> <p>All the above mentioned are reason of his brother's arrest, being held at gunpoint, institution of the fabricated criminal case against him.</p> <p>Besides a number of articles of the European Convention on Human rights, articles 1.2.2, 12.1, 12.6, 14.3, 15.2.1, 15.3, 21.1, 84.5.19, 85.3, 91.5.6, 84.5.20, 155.1.5, 155.2.2, 155.2.3, 162.5.1, 178.1, 91.5.8, 91.5.21, 92.9.2, 92.9.11, 95.6.7, 125.2.1, 125.2.2, 125.2.7, 128.3.1, 150.2, 153.2.1, 153.2.2, 153.2.4, 153.2.5, 153.2.10, 155.1.1, 155.1.2, 155.1.3, 226.1, 227.3, 230.1.1, 230.2, 285.1 etc. of the Criminal Procedural Code of The Republic of Azerbaijan were grossly violated with regard to Igbal Aghazadeh.</p> <p>The fictitious criminal case instituted against Igbal Aghazadeh must be dismissed by acquittal without delay, all his violated rights as well as his status of deputy must be restored. The criminal case fabricated against his brother – Ilgar Aghazadeh also must be dismissed without delay. All tortures and persecution against his family must be stopped.</p> <p>All persons involved in subjection of Igbal Aghazadeh as well as</p>

	his family members to prosecutions, pressure, tortures and degrading treatment, must be held criminally liable. Suffered material and moral damages must be compensated.
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<b>Name of defendant</b>	<b>HUSSEIN (f/n) PANAHAH (s/o) CHODAR</b>
<b>Name of defence lawyer</b>	YUSIF (f/n) HAJIYEV, TELMAN (f/n) VERDIYEV, MIRISMAYIL (f/n) HADI
<b>Charges against defendant</b>	Prior to preliminary investigation: Articles 220.1 (Abetting in mass riots) and 315.2 (Violence against public officer) of the Criminal Code of the Republic of Azerbaijan. Then: articles 32.3, 220.1 and 32.3, 315.2 (Master-minding of mass riots and abetting in use of force dangerous for life and health against public officer).
<b>Date, place and time of arrest</b>	On 18 October 2003 at 12h10 a.m. On the same day approximately at 11h30 a.m. officers of the Special Task Group of the Department for the Fight Against Organized Crime of the Ministry of Internal Affairs of the Republic of Azerbaijan invaded my apartment at Nakhichevani 27/47, Baku city. I was arrested in the Department for the Fight Against organized Crime.
<b>Date and time of intimation of the fact and place of detention to third parties (relatives, lawyers)</b>	On 18 October 2003 approximately at 17h30 my advocate – Mr. Yusif Hajiyev was informed about my arrest.
<b>Date, place and time of first interrogations</b>	On 18 October 2003 approximately at 17h30 an attempt was made to interrogate me at the Department for the Fight Against Organized Crime. The same day approximately at 17h30 I was questioned at the Serious Crimes Investigation Department of the General Public Prosecutor’s Office of the Republic of Azerbaijan.
<b>Summary of any alleged violations of human rights, in particular torture or inhumane or degrading treatment</b>	1) Invasion in my apartment was made by the officers of the Department for the Fight Against Organized Crime without presenting any document; 2) I was kept at the Department for the Fight Against Organized Crime without being provided with any formal notice prior to arrest and presenting any document. 3) On 18 October 2003 I was subjected to physical and moral tortures at the Department for the Fight Against Organized Crime. 4) I was kept illegally at the Department for the Fight Against Organized Crime from 18 to 22 October 2003 though during 24 hours I had to be transferred to isolation ward nr:1 of the Ministry of Justice of the Republic of Azerbaijan pursuant to an arrest warrant issued against me on 18 October 2003.

<b>Date, place and time of first access to legal representation</b>	On 18 October 2003 at 17h30 first meeting with my advocate – Mr. Yusif Hajiyev was provided at the Serious Crimes Investigation Department of the General Public Prosecutor’s Office of the Republic of Azerbaijan. No possibility was provided to meet with him during the next 5 days. My advocate was beaten by police during the examination of the case.
<b>Date, place and time of subsequent detentions</b>	On 18 October 2003 approximately at 20:00 an arrest warrant was issued against me by Nasimi district court which took only 3 minutes. We (my advocate and me) were not provided with any grounds for why the arrest warrant was issued against me. There were no such kind of grounds in this case.
<b>Date and place of first appearance before a court to review detention and granting of bail</b>	Motions for replacement of arrest by another form of restrictive measures were considered twice on 10 January 2004 and on 02 April 2004. First time it was considered by Nasimi district court and second motion was considered by the Grave Crimes Court of the Republic of Azerbaijan without my participation. Both of them were rejected without any grounds.
<b>Grounds relied upon by prosecution and the court to refuse bail and to continue detention</b>	Gravity of the offences, I am accused of by the public prosecutor’s office, was taken as a ground. Also probability of absconding was taken as a ground for prolongation of arrest on 15 January 2004. I was kept under custody from 18 April until 02 June 2004 without making any decision by the court.
<b>Date on which new criminal case (#80365) separating the defendants from the rest of the accused in the October events</b>	On 01 March 2004 this case was separated from case nr: 80308. On 02 March 2004 preliminary investigation was completed.
<b>Date on which defendants and their counselors receive materials in the criminal case + brief description of materials served on defence</b>	On 05 March 2004 the case materials then demonstrative evidence were provided in delays by virtue of motions made. 2 weeks part of this term was prolonged by the public prosecutor’s office, as motions for providing the demonstrative (tangible) evidence were rejected.
<b>Date upon which the bill of indictment is prepared and approved; the case is sent to court + date upon which it was served on the defendants</b>	On 22 April 2004 the indictment was drawn up and it was submitted on 26 April 2004.
<b>Date of Preparatory session of the court</b>	07 May 2004.
<b>Summary of complaints that defendants have in relation to preparatory session of court.</b>	The court held semi-closed sessions, the court building was encircled by policemen. Some obstacles were made for the public to watch the trial.

<b>For example any difficulties or disadvantages faced by defence</b>	Despite 300 official participants attending the judicial process, it is held in a room designed for 46 persons. All 31 motions made during the preparatory session of the court were rejected except the watching of video cassettes.
<b>Summary of all submissions made by defence and sent to the court (date and summary of nature of submission) and whether dealt with by the court (i.e. any response and ruling by the court)</b>	I made 16 motions: 1) on procedural law violations; 2) for investigation of tortures; 3) for taking a list of evidence; 4) for exclusion of admissible evidence; 5) protest against the composition of the court; 6) for providing with copies of decisions; 7) for permission to videotape the process; 8) for making the possibility to become familiar with the record of judicial proceedings
<b>Summary of any complaints regarding inadequate facilities for defence to prepare for trial</b>	In fact some obstacles were made for the advocate to become familiar with the case including the demonstrative evidence.
<b>Summary of any instances of failure by prosecution to disclose material which would assist the defence</b>	During the preparatory session of the court the public prosecutor called us as criminals and noted that he couldn't be impartial as a public prosecutor. Though written documents have been provided, no copies of the demonstrative evidences have been given yet. We haven't been informed with any procedural actions and decisions since the court session started. Only copies of 8 of 50 decisions were provided. No possibility has been provided to become familiar with the records including record of the preparatory session.
<b>Summary of any other relevant complaints in relation to violations of human rights or fair trial rights</b>	1) The court is not independent (the judges are not independent) 2) The judges support the prosecuting party. All motions made for ensuring of my rights to defence, including for acceptance of a list of witnesses and evidence, were rejected or kept as unconsidered.
<b>Any other relevant remarks that defence wish to draw to the attention of ODIHR</b>	1) to provide openness and publicity of the trial as well as conduct of it in a large room under normal conditions; 2) to provide video shooting of the judicial proceedings; 3) to provide cancellation of arrest warrant which is groundless against the accused person; 4) to provide keeping of the time limit for judicial proceedings; 5) to provide an opportunity for the defence party to present its evidence and witnesses, question and examine; 6) to provide an opportunity for the public watch of the trial; 7) to provide interrogation of governmental officials.

<b>Name of defendant</b>	<b>MAMMADOV (f/n) SARDAR (s/o) JALAL</b>
<b>Name of defence lawyer</b>	MAMMADOV (f/n) HAZI (s/o) A., KHASAYEV (f/n) VUGAR (s/o) H., SAFAROV (f/n) NAMIZAD (s/o) H.
<b>Charges against defendant</b>	Articles 32.3, 220.1 (Master-minding of mass riots) and 32.3, 315.2 (Abetting in maintaining resistance to public officer or use of force) of the Criminal Code of the Republic of Azerbaijan.
<b>Date, place and time of arrest</b>	On 18 October 2003 approximately at 18-19h00 at Bul-Bul Avenue 50, apt#50, Baku city.
<b>Date and time of intimation of the fact and place of detention to third parties (relatives, lawyers)</b>	On 18 October 2003 approximately at 22h00.
<b>Date, place and time of first interrogations</b>	On 19 October 2003 at 12h30 at the Grave Crimes Investigation Department of the General Public Prosecutor's Office of the Republic of Azerbaijan.
<b>Summary of any alleged violations of human rights, in particular torture or inhumane or degrading treatment</b>	Articles 33 (Immunity of residence), 46 (Protection of honour and dignity), 63 (Presumption of innocence), 26 (Protection of human and citizen rights and freedoms), 28 (Right to liberty), 31 (Right to security), 60 (Right to a remedy), 61 (Right to legal aid), 62 (Exclusion of jurisdiction alteration), 67 (Rights of persons detained, arrested, charged with a crime), 68 (Right to claim damages) of the Constitution of the Republic of Azerbaijan.
<b>Date, place and time of first access to legal representation</b>	On 18 October 2003 at 22h00 at the Department for the Fight Against organized Crimes of the Ministry of Internal Affairs of the Republic of Azerbaijan.
<b>Date, place and time of subsequent detentions</b>	On 19 October 2003 approximately at 16h00.
<b>Date and place of first appearance before a court to review detention and granting of bail</b>	On 28 October 2003 by the Court of Appeal of the Republic of Azerbaijan; On 18 December 2003 by Nacimi district court.
<b>Grounds relied upon by prosecution and the court to refuse bail and to continue detention</b>	– degree of public danger of the committed offence; – probability to escape from the investigation.
<b>Date on which new criminal case (#80365) separating the defendants from the rest of the accused in the October events</b>	On 01 March 2004 case nr: 80365 was separated from case nr: 80308
<b>Date on which defendants and their counselors receive</b>	On 06 March 2004: 22 volumes of case materials



<b>materials in the criminal case + brief description of materials served on defence</b>	22 pieces of video cassettes as demonstrative evidence
<b>Date upon which the bill of indictment is prepared and approved; the case is sent to court + date upon which it was served on the defendants</b>	The indictment was approved on 22 April 2004, sent to the court on 26 April 2004 and was provided on 22 April 2004.
<b>Date of Preparatory session of the court</b>	The preparatory session of the court had been set for 07 May 2004, but it was postponed until 12 May 2004.
<b>Summary of complaints that defendants have in relation to preparatory session of court. For example any difficulties or disadvantages faced by defence</b>	<ul style="list-style-type: none"> <li>- demands for providing openness and publicity of the trial;</li> <li>- violations of the right to defence by not allowing the video recording of the court session;</li> <li>- demands for providing us with copies of decisions made on our motions and complaints;</li> <li>- demands for providing us with an opportunity to become familiar with records of the court sessions as well as to make notes (records);</li> <li>- protests against the judge and public prosecutor;</li> <li>- demands for making decisions on procedural law violations committed during the preliminary investigation.</li> </ul>
<b>Summary of all submissions made by defence and sent to the court (date and summary of nature of submission) and whether dealt with by the court (i.e. any response and ruling by the court)</b>	<ul style="list-style-type: none"> <li>- On 12 May 2004 a protest was made against the judge;</li> <li>- On 12 May 2004 a motion was made for providing openness of the trial;</li> <li>- On 12 May 2004 a motion was made for providing the right to defence in the trial;</li> <li>- On 12 May 2004 a motion was made for cancellation of the criminal proceedings;</li> <li>- On 12 May 2004 a motion was made for taking measures against persons who had committed procedural law violations;</li> <li>- On 12 May 2004 a motion was made for compensation;</li> <li>- On 28 June 2004 a motions was made for exclusion of false evidence and taking measures against guilty persons;</li> <li>- On 28 June 2004 a motion was made for appointment of experts;</li> <li>- On 28 June 2004 a motion was made for providing the right to defence;</li> <li>- On 28 June 2004 a motion was made for summons of witnesses to appear;</li> <li>- On 12 May 2004 a protest was made against the public prosecutor;</li> <li>- No decisions was made on a set of written and verbal motions made during the preparatory session of the court. Otherwise these decisions were not provided. On 18 June 2004 a motion was made for consideration of this matter.</li> </ul>

<p><b>Summary of any complaints regarding inadequate facilities for defence to prepare for trial</b></p>	<p>Very short time was appointed for becoming familiar with the case materials. Little time was given for the watching of 22 video cassettes. Joint defence with the other accused persons couldn't be made due to being kept in one-man cell. No possibility was provided to meet with the advocate from 24 May to 23 June 2004.</p>
<p><b>Summary of any instances of failure by prosecution to disclose material which would assist the defence</b></p>	<p>The public prosecutor proclaimed his partiality at the preparatory session. Neither the Constitution of the Republic of Azerbaijan, nor the Law on Public Prosecution, the Criminal Procedural Code of the Republic of Azerbaijan, European Convention on Human Rights are observed by him. He encourages the court to violate our rights. He violates our right to defence in the trial.</p> <ul style="list-style-type: none"> <li>- decisions made on motions and complaints;</li> <li>- records of the court sessions;</li> <li>- decisions made by the court</li> </ul>
<p><b>Summary of any other relevant complaints in relation to violations of human rights or fair trial rights</b></p>	<p>The following articles of European Convention on Human Rights were violated:</p> <ul style="list-style-type: none"> <li>- article 3: I was subjected to torture and inhuman or degrading treatment.</li> <li>- article 5, paragraph 1 "c": I was arrested without any reasonable suspicion</li> <li>- article 5, paragraph 2: When I was arrested, I wasn't informed of the reasons of my arrest.</li> <li>- article 6: Courts of Azerbaijan are not independent. They are biased by political orders and don't keep the time limit for trial. The trial started after 7 months. The case is being tried unfairly. Participation of press in the trial has been restricted.</li> <li>- article 6, paragraph 2: On 19 October 2003 the Parliament (National Assembly) of the Republic of Azerbaijan made a decision on the events and guilty persons. The chief of Sabail District Police Department called me a criminal and attempted to punish me. The public prosecutor called me a criminal. According to the General Public Prosecutor's speech made on TV, I have allegedly been proved guilty. The high-ranking officials of the Ministry of Internal Affairs made statements on finding my guilt.</li> <li>- article 6, paragraph 3 "a": I was not informed promptly and immediately of reasons of my arrest. Some obstacles were made for my defence. No possibility was provided for me to meet with my advocate from 19 to 22 October 2003. Incompatibly with paragraph "d", the court hasn't accepted a list of witnesses called by me.</li> <li>- article 8: Officers of the Department for the Fight Against Organized Crime broke a window of my apartment and invaded it without any explanation and presenting no decision made by the court or by the public prosecutor.</li> <li>- article 11: The executive authority of Baku city had not</li> </ul>



	satisfied an application for permission to hold a meeting on 11 October 2003 which caused the events to develop by another direction.
<b>Any other relevant remarks that defence wish to draw the attention of ODIHR</b>	Democratic elections have never been held in Azerbaijan since Azerbaijan earned its independence and became a member of the Council of Europe. The courts of Azerbaijan approve arrests by political orders. Political rights are grossly violated in Azerbaijan. Human beings are subjected to torture. The press is compelled to fall silent. International obligations are defaulted on. Constitutional law is not kept in fact. Governmental officials failure to comply with laws in every step. Some obstacles are made for activities of NGOs.

<b>Name of defendant</b>	<b>ABBASOV (f/n) RAUF (s/o) ARIF</b>
<b>Name of defence lawyer</b>	PANAHOV (f/n) SAMED (s/o) ASKER
<b>Charges against defendant</b>	Articles 32.3, 220.1 and 32.3, 315.2 of the Criminal Code of the Republic of Azerbaijan (Masterminding of mass riots and maintenance of resistance to public officer in Baku city on 16 October 2003).
<b>Date, place and time of arrest</b>	On 27 October 2003 R. Abbasov was kept under custody in the General Public Prosecutor's Office of the Republic of Azerbaijan and the same day arrest warrant was issued against him by Nasimi district court.
<b>Date and time of intimation of the fact and place of detention to third parties (relatives, lawyers)</b>	Though relatives of R. Abbasov were not informed about his arrest, all Azerbaijan community was aware of this incident.
<b>Date, place and time of first interrogations</b>	On 27 October 2003 in the Department for Investigation of Serious Crimes of the Office of the Prosecutor General of the Republic of Azerbaijan.
<b>Summary of any alleged violations of human rights, in particular torture or inhumane or degrading treatment</b>	R. Abbasov was deprived of all opportunities to get any information being kept in a solitary cell; he even wasn't provided with paper and pen, couldn't execute religious rites, was kept hungry under unsanitary conditions etc.
<b>Date, place and time of first access to legal representation</b>	Since 27 October 2003, requests to meet with the accused have been refused only once.
<b>Date, place and time of subsequent detentions</b>	On 27 October 2003 Nasimi district court issued an arrest warrant against him (On 27 January 2004 arrest was prolonged for 3 more months).
<b>Date and place of first appearance before a court to review detention and granting of bail</b>	In December of 2003 a motion for replacement of arrest by another form of restrictive measure was rejected. Though a motion for replacement of arrest by another form of restrictive measures was made several times during court proceedings, arrest warrant has been kept in force.

<b>Grounds relied upon by prosecution and the court to refuse bail and to continue detention</b>	Though there were neither initial evidence nor argument for that R. Abbasov would abscond, arrest was kept in force being based on that he could allegedly escape.
<b>Date on which new criminal case (#80365) separating the defendants from the rest of the accused in the October events</b>	
<b>Date on which defendants and their counselors receive materials in the criminal case + brief description of materials served on defence</b>	The advocates of R. Abbasov were not provided with case materials for familiarization. Despite the court's promise to make an opportunity for them, it didn't occur.
<b>Date upon which the bill of indictment is prepared and approved; the case is sent to court + date upon which it was served on the defendants</b>	On 22 April 2004 the indictment was compiled, which was sent to the court on 26 April 2004. R. Abbasov was provided with it on 22/04/2004.
<b>Date of Preparatory session of the court</b>	Though 07 May 2004 was appointed for the preparatory session of the court, it was only held from 12 May to June 2004.
<b>Summary of complaints that defendants have in relation to preparatory session of court. For example any difficulties or disadvantages faced by defence</b>	No opportunity was made for the defence party to become familiar with case materials, to submit any evidence. They were not provided with any copies of decisions.
<b>Summary of all submissions made by defence and sent to the court (date and summary of nature of submission) and whether dealt with by the court (i.e. any response and ruling by the court)</b>	All motions for familiarization with case materials and video cassettes, utilization of technical means, holding of court sessions in open and spacious room, providing safety of the advocates, inadmissible evidences, submission of evidences by the defence party were rejected. No copy of the court decision was provided.
<b>Summary of any complaints regarding inadequate facilities for defence to prepare for trial</b>	No opportunity was made for the preparation of the defence. Though written and verbal motions were made in court, no criminal case materials were provided nor was a time was appointed for preparation.
<b>Summary of any instances of failure by prosecution to disclose material which would assist the defence</b>	No copies of any documents were provided.
<b>Summary of any other relevant complaints in relation to violations of human rights or fair trial rights</b>	Motions for the above mentioned are made in court. It couldn't be appealed until the court makes its final decision.

	However I would like to note that no opportunity has been provided for the advocate to become familiar with the case materials, no evidences of the defence party have been accepted by the court. It's impossible to talk about fair trial as well as a right of defence under those kind of conditions.
<b>Any other relevant remarks that defence wish to draw the attention of ODIHR</b>	

## ANNEX 6: CONFERENCE RECOMMENDATIONS

CONFERENCE RECOMMENDATIONS  
FORMATION OF THE NEW BAR OF ADVOCATES:  
IMPLEMENTATION OF THE LAW ON ADVOCATES  
AND ADVOCATES ACTIVITIES  
Baku, Azerbaijan  
June 23 and 24, 2004

The two-day conference sponsored and organized by the United States Embassy, the American Bar Association Central European and Eurasian Law Initiative (ABA-CEELI), and the Organization for Security and Cooperation in Europe (OSCE) focused on possible methods of implementation of the recent amendments to the Law on Advocates as adopted by Milli Majlis and currently before President I. Aliyev for signature. The specific topics included the new admission standards of the written bar examination and oral interview and internal professional disciplinary procedures. The participants represented a broad cross-section of the legal community to include advocates, practicing lawyers, judges, prosecutors, legal scholars, and representatives of the Presidential Apparatus, Ministry of Justice, and Milli Majlis.

After two days of presentation by colleagues from Poland, Russia, Georgia, and the United States and open discussion among the participants, the following recommendations are made to President I. Aliyev and the relevant executive body regarding initial steps toward implementing the Law on Advocates:

### CONFERENCE RECOMMENDATIONS

Understanding there may be future amendments to the law, and without considering what those amendments are or should be, the following recommendations are presented for the implementation of the Law on Advocates:

Organizational Committee:

1. No later than three (3) days from the date the law is enacted, the list of all potential nominees for the Organizational Committee (including all current members of the Collegium of Advocates and licensed attorneys registered with the Minister of Justice) be published;
2. No later than two (2) weeks from the date the law is enacted, the Collegium of Advocates with consideration from all its members appoints three (3) members to the Organizational Committee;
3. No later than two (2) weeks from the date the law is enacted, the relevant executive authority appoints three (3) licensed lawyers, from a list of nominees provided by the entire group of licensed lawyers, as members to the Organizational Committee;
4. No later than one (1) month from the date the law is enacted, the Organizational Committee shall publish the list of all invited members to the Constitutive Meeting;

5. No later than two (2) weeks after the publication of the invited member list, individuals seeking membership and not on the published list shall present complaints to the Organizational Committee;
6. No later than two (2) months after the date the law is enacted, the Organizational Committee shall publish the date and venue/location for the Constitutive Meeting;
7. No later than three (3) months after the date the law is enacted, the Constitutive Meeting shall be held;
8. The Organizational Committee shall be responsible for obtaining the necessary funding to publish the information described above and host the Constitutive Meeting.

### **Written Bar Examination**

1. The questions on the written exam should be in multiple-choice format;
2. A reasonable period of time should be set for proposed examination questions to be submitted to the Qualifications Committee from the community at large;
3. The Qualifications Committee should select appropriate questions based on knowledge and application of the current laws and legal practice of Azerbaijan Republic creating a pool of at least 1000 potential questions from which each examination shall be created;
4. The pool of potential examination questions should be published and available to all applicants no less than forty-five (45) days prior to the examination; and each applicant to the Bar should receive a copy of the pool of examination questions when they apply for the examination;
5. On the day of the examination, the actual examination questions should be randomly selected by computer from the pool of examination questions previously published;
6. The written examination should be monitored by independent observers to ensure no outside materials are used by those taking the examination;
7. A complaint and appeals process should be established prior to the administration of the first examination.

### **Oral Interview**

1. Each question asked during the oral interview must relate to the knowledge and application of the current laws and legal practice of the Azerbaijan Republic;
2. The Qualifications Committee should select appropriate questions based on knowledge and application of the current laws and legal practice of Azerbaijan Republic creating a pool of at least forty (40) potential questions from which each interview question is asked;
3. The pool of potential examination questions should be published and available to all applicants

no less than forty-five (45) days prior to the examination; and each applicant to the Bar should receive a copy of the pool of interview questions when they apply for the examination;

4. More than one applicant/candidate should be present during each oral interview;
5. Each oral interview should be open to independent observers;
6. Each oral interview should be recorded either video or audio equipment that is operated by independent technicians;
7. A complaint and appeals process should be established prior to the administration of the first examination.

