

**Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the independence of judges and lawyers**

Ref.: AL AZE 2/2024  
(Please use this reference in your reply)

28 June 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the situation of human rights defenders; Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolutions 52/4, 51/8, 52/9, 51/21 and 53/12.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged arbitrary arrest and detention of Mr. Anar Mammadli, his alleged prosecution, searches, restricted access to legal assistance and other due process violations, the alleged smear campaign against him, and the alleged lack of an effective remedy and reparations for previous violations of his rights, all reportedly in connection with his legitimate election observation and human rights work and the exercise of his freedom of expression.** The allegations received also indicate that some of the alleged violations might constitute acts of intimidation and reprisals for engaging or attempting to engage with the United Nations, its representatives, and mechanisms in the field of human rights.

Mr. **Anar Mammadli** is a prominent Azerbaijani human rights defender. He is the chairman of the Election Monitoring and Democracy Studies Center (EMDSC), a non-governmental organization that conducts independent election monitoring and promotes civil and political rights in Azerbaijan.

We previously wrote to your Excellency's Government regarding the targeting of the EMDSC on 26 November 2013 (AL AZE 5/2013) and the criminal charges against Mr. Anar Mammadli on 6 May 2014 (AL AZE 2/2014). We also wrote to your Excellency's Government regarding the arbitrary detention and prosecution of five human rights defenders and journalists from the media outlet Abzas Media on 16 May 2024 (AL AZE 1/2024). We acknowledge the reply from your Excellency's Government dated 15 July 2014 and regret not receiving replies to the other communications. We remain concerned given the allegations below.

According to the information received:

*Alleged lack of effective remedy for previous human rights violations in 2013*

Mr. Anar Mammadli was previously prosecuted and imprisoned, allegedly in retaliation for his legitimate work documenting alleged widespread

irregularities and human rights violations around the presidential elections of 9 October 2013.

On 16 December 2013, he was arrested and placed in pre-trial detention for a period of three months, which was subsequently extended. On 26 May 2014, the Baku Court of Grave Crimes found Mr. Mammadli guilty under articles 179.3.2 (“high-level embezzlement”), 313 (“forgery in public office”), 192.2.2 (“illegal entrepreneurship”), 213.1 (“large-scale tax evasion”), and 308.2 (“abuse of power”) of the Criminal Code and sentenced him to five and a half years of imprisonment. On 10 December 2014, the Baku Court of Appeal upheld this judgment. It was further upheld on 26 August 2015 by the Supreme Court. Following a presidentially decreed pardon on 17 March 2016, Mr. Mammadli was released from serving the remainder of his sentence.

In its judgement in *Mammadli v. Azerbaijan* (application no. 47145/14), dated 19 April 2018, the European Court of Human Rights (“ECtHR”) held that there have been violations of article 5 para. 1 (“right to liberty and security”), article 5 para. 4 (“right to have lawfulness of detention decided speedily by a court”), and article 18 (“limitation on use of restrictions on rights”) of the European Convention on Human Rights taken in conjunction with article 5. In particular, the ECtHR found that Mr. Mammadli’s arrest and detention had not been to bring him before a competent legal authority on reasonable suspicion of having committed an offence, but to silence and punish him as a civil society activist for his activities in the area of electoral monitoring; that the facts relied on by the prosecuting authorities had not been sufficient to suspect him of having committed the offences with which he had been charged, nor had they provided any other information or evidence which could serve as a basis for the suspicion underpinning his arrest and pre-trial detention; and that the courts had not carried out a proper judicial review of his detention. The ECtHR held that Azerbaijan was to pay Mr. Mammadli, by 19 October 2018, non-pecuniary damages and a compensation of costs and expenses. The Committee of Ministers of the Council of Europe, mandated to supervise the execution of the ECtHR judgments, has repeatedly underlined the requirement for *restitutio in integrum* in the case and stated that this could only be achieved through the quashing of conviction, its erasure from the criminal records, and the elimination of all other consequences of the criminal charges brought against Mr. Mammadli, including by fully restoring his civil and political rights.

However, according to the information received, Mr. Mammadli’s conviction has not been quashed, his civil and political rights have not been restored, and he has not been compensated.

#### *Alleged smear campaign and prosecution in 2024*

Under Mr. Anar Mammadli’s leadership, the EMDSC conducted independent observations of the pre-election campaign and presidential elections of 7 February 2024, reporting widespread shortcomings. On 20 February 2024, Mr. Mammadli co-founded the Climate of Justice Initiative, a civil society group aiming to leverage the 29<sup>th</sup> United Nations Climate Change Conference (COP 29), scheduled for November 2024 in Baku, to promote civil liberties, public participation, and environmental justice in Azerbaijan. Mr. Anar

Mammadli also reportedly spoke about the human rights situation in Azerbaijan at a side event on 15 March 2024 during the UN Human Rights Council session and at a civil society Human Dimension event with the Organization for Security and Co-operation in Europe on 18 March 2024.

Since around 5 February 2024, pro-government media outlets have been targeting Mr. Mammadli and his EMDSC with a smear campaign, accusing them of using foreign funding to undermine the country through election monitoring and human rights work.

On 29 April 2024, Mr. Mammadli was apprehended by police near the entrance of the kindergarten in Baku where he was picking up his child. They allegedly searched his car. Then a group of people in civilian clothes, wearing police uniform jackets, allegedly forced him into a black civilian car. There was no arrest warrant presented, and Mr. Mammadli was told that they had some questions for him concerning a recently arrested person. About an hour later, officers from the Baku City Main Police Department searched his home and his parents' home, without presenting search warrants. According to the information received, police seized at least three phones, two laptops, several documents, a flash drive, two laptops belonging to Mr. Mammadli's sister, and bank cards belonging to his father. After the home search police reportedly took Mr. Mammadli to the Baku City Main Police Department.

On 30 April 2024, Mr. Mammadli was charged with smuggling money by a group of persons by prior conspiracy under article 206.3.2 of the Criminal Code. The punishment under this article ranges from five to eight years of imprisonment.

According to the accusations, Mr. Anar Mammadli allegedly engaged in a criminal conspiracy with others to obtain substantial income. From 2021 to 2023, they allegedly secured significant funding from foreign donors and smuggled the currency into Azerbaijan through Heydar Aliyev International Airport without declaring it at customs. Mr. Mammadli denied the accusations.

On 30 April 2024, the Khatai District Court in Baku placed Mr. Mammadli in pre-trial detention for 3 months and 28 days. On 6 May 2024, the Baku Court of Appeal dismissed his appeal against the detention order. On 8 May 2024, the Khatai District Court in Baku rejected the motion to transfer Mr. Mammadli to house arrest or release him on bail. On 15 May 2024, the Baku Court of Appeal reportedly dismissed his appeal against this decision. Mr. Anar Mammadli is being held in Baku Detention Center No. 1.

Mr. Mammadli reportedly has several health conditions: chronic respiratory issues worsening in detention, digestive problems requiring a specific diet that cannot be followed in detention, spinal problems causing severe pain without special bedding, and skin and joint issues that can deteriorate and cause suffocation attacks.

#### *Access to legal assistance*

Mr. Mammadli allegedly did not have access to a lawyer from the time of his arrest at around 3 p.m. on 29 April 2024 until about 1 p.m. on 30 April 2024,

shortly before his pre-trial detention hearing. As a result, he was interrogated without a lawyer being present. Police also reportedly did not allow his lawyers to be present during the searches of his home, car, and his parents' home. Additionally, two lawyers Mr. Mammadli who wished to join his defense team were denied permission by the police. One lawyer was subsequently allowed to join his defense team a month later, on 30 May 2024, while the other is allegedly still unable to do so.

The reasons were allegedly as follows:

First, defense lawyers (registered at legal bureaus) can only join the case after presenting an order and contract signed by their bureau. After his arrest, Mr. Mammadli provided the police with the phone number of his lawyer. However, by the time the police called the lawyer, the legal bureau was closed, and the lawyer could not get an order signed until the next day.

Second, the case against Mr. Mammadli was originally part of the Abzas Media case before being separated on 27 April 2024. Azerbaijani lawyers willing to take such cases are allegedly rare and already involved in the Abzas Media case. Law enforcement authorities allegedly prevent them from defending more than one person in a group case, citing potential conflicts of interest. Despite the separation and the lack of conflicts of interest, the police used this connection to deny lawyers' participation in the searches and to deny two lawyers permission to join the case.

While we do not wish to prejudge the accuracy of these allegations, we would like to express our serious concern in response to the arrest and detention of Mr. Anar Mammadli and his prosecution, which appear to be directly linked to his legitimate election observation and human rights work and the exercise of the right to freedom of expression. We are gravely concerned that they might constitute acts of intimidation and reprisals for engaging or attempting to engage with the United Nations, its representatives and mechanisms in the field of human rights. Further, we are concerned about the chilling effect on freedom of expression, election monitoring and other human rights defenders' work that Mr. Mahammadli's prosecution is prone to generate. We are also concerned about the related allegations of searches of Mr. Mammadli's home and car and his parents' home, restricted access to legal assistance and other due process violations, and the smear campaign against him. Finally, we are concerned that he has reportedly not yet received an effective remedy and reparations for the violations of his rights, despite the ECtHR' final judgment in 2018.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide information about the steps your Excellency's Government have taken to ensure the right of Mr. Anar Mammadli to an effective remedy and reparation in respect of previous violations of his rights.
3. Please provide information about the factual and legal basis for the prosecution of Mr. Anar Mammadli, his arrest and detention, as well as searches of his and his parents' homes and his car and explain how these are compatible with the obligations of your Excellency's Government under international human rights law.
4. Please explain why other alternative measures, such as house arrest or bail, were not permitted in case of Mr. Anar Mammadli, in particular in light of his health condition.
5. Please provide information relating to Mr. Anar Mammadli's current health condition and what measures have been and are being taken to ensure his access to adequate medical care.
6. Please provide information about the measures taken to review Mr. Anar Mohammadi's case and ensure that his prosecution does not take place neither in retribution for his legitimate work as a human rights defender, his election monitoring or his exercise of his freedom of expression; nor in reprisal for engaging or attempting to engage with the United Nations, its representatives and mechanisms in the field of human rights. Please describe the procedure followed to verify these allegations and, if they have been dismissed, please explain the reasons for it.

We would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Further, we would like to inform your Excellency's Government that after having transmitted the information contained in the present communication to the Government, the Working Group on Arbitrary Detention may also transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider

public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

In light of the allegations of intimidation and reprisals for cooperation with the United Nations in the field of human rights, we reserve the right to share this communication – and any response received from your Excellency's Government – with other UN bodies or representatives, in particular with the senior United Nations official designated by the Secretary-General to lead the efforts within the United Nations system to address this issue.

Please accept, Excellency, the assurances of our highest consideration.

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Ganna Yudkivska  
Vice-Chair on communications of the Working Group on Arbitrary Detention

Irene Khan  
Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Margaret Satterthwaite  
Special Rapporteur on the independence of judges and lawyers

## Annex

### Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights standards.

We would like to refer your Excellency's Government to article 2(3) of the International Covenant on Civil and Political Rights ("ICCPR"), acceded to by Azerbaijan on 13 August 1992, which guarantees the right to an effective remedy. As the Human Rights Committee emphasized in general comment No. 31 [80] (CCPR/C/21/Rev.1/Add. 13), article 2(3) requires that States parties make reparation to individuals whose ICCPR rights have been violated (paragraph 16). In addition to the explicit reparation required by article 9(5) and article 14(6), the Committee considers that the ICCPR generally entails appropriate compensation (Id.). The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition, changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations (Id.). Even when the legal systems of States parties are formally endowed with the appropriate remedy, violations of Covenant rights still take place; this is presumably attributable to the failure of the remedies to function effectively in practice (paragraph 20).

We would also like to refer your Excellency's Government to article 19, which requires the States parties to guarantee the right to freedom of expression, including the right to seek, receive, and impart information and ideas of all kinds. As interpreted by the Human Rights Committee in general comment No. 34 (CCPR/C/GC/34), such information and ideas include, inter alia, political discourse, commentary on public affairs, and discussion of human rights (paragraph 11).

We would like to remind your Excellency's Government that any restrictions to the right to freedom of expression must meet the criteria established by international human rights standards, such as article 19(3) of the ICCPR. Under these standards, restrictions must be provided for by law and conform to the strict tests of necessity and proportionality. Article 19(3) may never be invoked to justify the muzzling of any advocacy of democratic tenets and human rights (paragraph 23). Nor, under any circumstance, can an attack on a person, because of the exercise of their freedom of opinion or expression, including such forms of attack as arbitrary arrest, be compatible with article 19(Id.). It is the States parties' duty to put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (Id.). All such attacks should be vigorously investigated in a timely fashion, the perpetrators be prosecuted, and the victims receive appropriate forms of redress (Id.).

We would also like to refer your Excellency's Government to article 17 of the ICCPR, which guarantees that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, or unlawful attacks on his honor and reputation. As emphasized by the Human Rights Committee in general comment No. 16 (CCPR/C/GC/16), the expression "arbitrary interference" can extend to interference provided for under the law and even interference provided for by law should be in accordance with the provisions, aims, and objectives of the ICCPR and

should be, in any event, reasonable in the particular circumstances (paragraph 4). Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment (paragraph 8).

We would like to refer your Excellency's Government to article 9 of the ICCPR, which guarantees everyone the right to liberty of person. As emphasized by the Human Rights Committee in general comment No. 35 (CCPR/C/GC/35), deprivation of liberty must not be arbitrary and must be carried out with respect for the rule of law (paragraph 10). According to the same General Comment (paragraph 17) and the jurisprudence of the Working Group on Arbitrary Detention, arrest or detention of an individual as punishment for the legitimate exercise of the rights guaranteed by the ICCPR, including freedom of opinion and expression, is arbitrary. The Human Rights Committee further stresses that persons who are deprived of liberty shall be informed, at the time of any deprivation of liberty, of the reasons for it (paragraph 24). That information must be provided immediately (paragraph 27). The Human Rights Committee has also interpreted that it should not be the general practice to subject defendants to pre-trial detention (paragraph 38). Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence, or the recurrence of crime (*Id.*).

We would also like to remind your Excellency's Government about article 14 of the ICCPR, which enshrines the right to equality before courts and tribunals and to a fair trial. Article 14(3) provides for the right of everyone to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing in the determination of any criminal charge against him. We would also like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted on 7 September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba). Principles 1, 2, 7, and 8, in particular, contain Member States' obligations to ensure prompt and effective access to lawyers. Moreover, principle 16 requires governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment, or improper interference.

With regards to the right to health, we would like to recall your Excellency's Government's obligations under article 12 of the International Covenant on Economic Social and Cultural Rights, which Azerbaijan acceded to on 13 August 1992. Article 12 protects the right to health and imposes the obligation on States to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to health preventive, curative and palliative services (Committee on Economic, Social and Cultural Rights, CESCR, general comment 14, para. 34).

The UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules"), adopted unanimously by the UN General Assembly (A/RES/70/175), establish States' responsibility to provide healthcare for prisoners (rules 24 to 35); to evaluate, promote and protect the physical health of detainees, paying particular attention to prisoners with special health-care needs (rule 25(1)), and ensure continuity of treatment and care (rule 24.2), as well as prompt access to medical attention in urgent cases and to specialized treatment where needed (rule 27.1). Further, we would like to refer your Excellency's Government to General The Basic Principles for the Treatment of Prisoners, adopted and proclaimed by General Assembly resolution 45/111, according to which "Prisoners shall have access to the health services available in the country

without discrimination on the grounds of their legal situation” (Basic Principles for the Treatment of Prisoners. Principle 9).

Furthermore, we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted on 9 December 1998 (also known as the UN Declaration on Human Rights Defenders). Articles 1 and 2 of the Declaration state that everyone has the right to promote and strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote, and implement all human rights and fundamental freedoms.

Likewise, we would like to bring to the attention of your Excellency’s Government the following provisions of the UN Declaration on Human Rights Defenders:

- Article 6(a)-(c), which provides for the right to know, seek, obtain, receive, and hold information about all human rights and fundamental freedoms; to freely publish, impart, or disseminate to others views, information, and knowledge on all human rights and fundamental freedoms; and to study, discuss, form, and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and to draw public attention to those matters;
- Article 9(1), which provides for the right to benefit from an effective remedy and to be protected in the event of the human rights violations; and
- Article 12(2) and (3), which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure, or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities, and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, and acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

Finally, we would like to draw your Excellency’s Government’s attention to Human Rights Council resolutions 12/2, 24/24, 36/21, 42/28, and 48/17 reaffirming the right of everyone, individually or in association with other, to unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights. The Human Rights Council urges States to refrain from all acts of intimidation or reprisals, to take all appropriate measures to prevent the occurrence of such acts. This includes the adoption and implementation of specific legislation and policies in order to promote a safe and enabling environment for engagement with the United Nations on human rights, and to effectively protect those who cooperate with the United Nations. The

Council also urges States to ensure accountability for reprisals by providing access to remedies for victims and preventing any recurrence. It calls on States to combat impunity by conducting prompt, impartial, and independent investigations, pursuing accountability, and publicly condemning all such acts.