

THE REPORT ON THE STATUS OF IMPLEMENTATION OF ECTHR CASES AGAINST AZERBAIJAN RELATING THE PRESUMPTION OF INNOCENCE



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**REPORT ON THE STATUS OF
IMPLEMENTATION OF ECTHR CASES
AGAINST AZERBAIJAN RELATING THE
PRESUMPTION OF INNOCENCE**

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1. Summary

The report contains the place of the presumption of innocence in local and international legislation, the judgments of the European Court of Human Rights (ECtHR) against Azerbaijan regarding the presumption of innocence, the status of execution of those judgments, gaps in this field, and recommendations to eliminate these gaps.

The report consists of six parts. General information about the report is given in the “Introduction” part. The second part deals with the methodology. This part provides information about the methodology of the report.

In the first subsection of the third part, the concept of presumption of innocence is given. In the second subsection, the place of the presumption of innocence in local legislation is defined. International legislation is described in the third subsection.

In the fourth part, general information about the ECtHR's judgments against Azerbaijan regarding Article 6.2 of the European Convention on Human Rights is reflected. In the fifth part, the status of execution of the court judgments against Azerbaijan related to Article 6.2 is analyzed separately.

The “Conclusion and Recommendations” part shows that there are existing gaps in the execution of ECtHR judgments in Azerbaijan and reflects recommendations to eliminate these gaps.

2. Introduction

Issues related to the presumption of innocence in Azerbaijan are regulated in accordance with international documents with the relevant norms of the Constitution and other normative legal acts. However, there are serious problems with the presumption of innocence in the country. These problems appear in the news published in the mass media and on the websites of government bodies, as a result of the non-observance of the presumption of innocence, a person is presented as having directly committed the acts for which he is suspected or accused.

The analysis of the situation shows that in the news published by mass media and media organs of government bodies, individuals are subjected to a massive and gross violation of the right to the presumption of innocence, recognized by international and local legislation, which is one of the most important and basic principles of administration of justice.

The report defined the presumption of innocence, described and analyzed local and international legislation, analyzed ECtHR judgments on the presumption of innocence regarding Azerbaijan, and examined the status of execution of those judgments. In the document, existing problems, as well as gaps in legislation and defects in practice were identified, and recommendations were made to eliminate these situations.

3. Methodology

The methodology of the report is divided into two stages:

1. Legal conditions related to the place of the presumption of innocence and ECtHR judgments in the legislative system of Azerbaijan;
2. ECtHR's judgments against Azerbaijan regarding the presumption of innocence and their status of execution.

At the initial stage, the place of the presumption of innocence and ECtHR's judgments in the legislation of Azerbaijan was determined, and the study in this regard was divided into three stages:

1. Place of presumption of innocence in local legislation;
2. Place of presumption of innocence in international legislation;
3. Place of ECtHR judgments in legislation.

In the second stage, ECtHR's judgments against Azerbaijan regarding the presumption of innocence and the status of execution of those judgments were monitored on the Court's website.

Thanks to the obtained information, the problems in this area have been identified and reflected in the report.

4. Abbreviations

1. AR – Republic of Azerbaijan
2. CC – Criminal Code
3. CPM – Code of Criminal Procedure
4. CAO – Code of Administrative Offences
5. ECHR (or Convention) – European Convention on Human Rights
6. ECtHR (or Court) – European Court of Human Rights

5. Concept of presumption of innocence and its reflection in legislation

5.1 Concept of presumption of innocence

Literally translated from Latin, presumption (“praesumptio”) means consideration, expectation, and hope. As a legal term, it is understood as "a consideration that is considered true until proven otherwise." The presumption of innocence (“praesumptio innocentiae”) means "the accused or suspect is considered innocent until proven otherwise." This principle is considered one of the basic principles of criminal proceedings.

The manifestation of the presumption of innocence in law goes back to the time of the ancient Greek states. Later, we can see this principle within the framework of Roman law. In Book IV of the Roman Code, the presumption of innocence is defined as follows:¹

“Let all accusers understand that they are not to prefer charges unless they can be proven by proper witnesses or by conclusive documents, or by circumstantial evidence which amounts to indubitable proof and is clearer than day.”

The idea of "innocent until proven guilty" existed among the principles of criminal justice in medieval Europe. Article 9 of the Declaration of the Rights of Man and of the Citizen, which was adopted after the Bourgeois Revolution in France states:

“As all persons are held innocent until they shall have been declared guilty, if arrest shall be deemed indispensable, all harshness not essential to the securing of the prisoner's person shall be severely repressed by law.”

Over time, all states that have chosen democratic values and the principle of fair trial have included the presumption of innocence among the principles of their criminal justice. Currently, the presumption of innocence is supported by a wide range of legal practices and is monitored through a number of conventions and international protection mechanisms.

5.2 Presumption of innocence in local legislation

Constitution of the Republic of Azerbaijan²

In Article 63 of the Constitution, which is the supreme law of the Republic of Azerbaijan, the presumption of innocence is reflected in five paragraphs. The article states:

¹ [yoAiodv4U8cCDxClOZZb6h1i7sypaF1gIQnKcp9V.pdf \(“idi-aze.org”\)](#)

² [Constitution of the Republic of Azerbaijan \(“e-qanun.az”\)](#)

- I. *Everyone has the right to presumption of innocence. Everyone who is accused of crime shall be considered innocent until his/her guilt has been proven according to law and verdict of law court has been brought into force.*
- II. *A person under well-grounded suspicions of crime may not be considered guilty.*
- III. *A person accused of crime shall not be obliged to prove his/her innocence.*
- IV. *Evidence obtained in violation of the law may not be used in the administration of justice.*
- V. *Nobody may be considered guilty in committing a crime without a court judgment.*

Paragraph 9 of Article 127 of the Constitution states, “*Justice shall be based on the presumption of innocence.*”

It is also necessary to pay attention to Article 151 of the basic law. That article states, “*If a conflict arises between normative legal acts of the legislative system of the Republic of Azerbaijan (with the exception of the Constitution of the Republic of Azerbaijan and acts adopted by referendum) and inter-state treaties to which the Republic of Azerbaijan is a party, the international treaties shall apply.*”

Furthermore, Article 71 of the Constitution, especially paragraphs 71.1, 71.2, 71.3, and 71.5, can also be attributed here. These articles provide for the guarantees for rights and freedoms of man and citizen.

Criminal Code of the Republic of Azerbaijan³

Article 7 of the Criminal Code (CC) of the Republic of Azerbaijan provides for the principle of responsibility for guilt. That article states:

“Person is subject to criminal liability and punishment only for those socially dangerous acts (actions or failure to act) and their effects concerning which his guilt is ascertained.

Person is not subject to criminal liability for innocent damnification.”

Article 290 of the Criminal Code stipulates that bringing a person to criminal liability, knowing that he is not guilty, leads to criminal liability:

“Bringing a person to criminal liability, knowing that he is not guilty, shall be punishable by imprisonment for a term of up to three years.

If the same acts are committed in connection with a person being accused of committing a serious or particularly serious crime, this shall be punishable by imprisonment for a term of three to seven years.”

Code of Criminal Procedure of the Republic of Azerbaijan⁴

³ [Criminal Code of the Republic of Azerbaijan \(“e-qanun.az”\)](http://e-qanun.az)

Article 21 of the Code of Criminal Procedure (CCP) of the Republic of Azerbaijan is entitled “Presumption of innocence”. This article reflects the principles and boundaries provided for in Article 63 of the Constitution:

“Any person suspected of committing an offence shall be found innocent if his guilt is not proven in accordance with this Code and if the court has not delivered a final judgment to that effect.

Even if there are reasonable suspicions as to the guilt of the person, this shall not cause the latter to be found guilty. The accused (the suspect) shall receive the benefit of any doubts which cannot be removed in the process of proving the charge in accordance with the provisions of this Code, within the appropriate legal proceedings. He shall likewise receive the benefit of any doubts which are not removed in the application of criminal law and criminal procedure legislation.

The accused shall not be obliged to prove his innocence. It shall be for the prosecution to prove the charge or to refute the evidence given in defence of the suspect or the accused.”

Article 157 of the CCP contains provisions related to arrest. Paragraph 1 of the article stipulates that in the absence of relevant evidence of the commission of a criminal act provided by the criminal law based on the presumption of innocence, that person cannot be arrested or detained in prison if it is not necessary:

“In accordance with the principle of the presumption of innocence, if the connection of the person to the offence committed is not proven, he may not be arrested or unnecessarily detained on remand.”

Article 222 of the CCP specifically defines the framework for the dissemination of preliminary investigation information. According to Paragraph 6 of the article, preliminary investigation information can be disclosed by the body that performs procedural management of the preliminary investigation or conducts the preliminary investigation in three cases:

- 1. If it is related to the public interest;*
- 2. If it prevents the spread of false information;*
- 3. If it demonstrates the necessity of responsibility for a crime.*

Code of Administrative Offenses of the Republic of Azerbaijan⁵

Article 4 of the Code of Administrative Offenses (CAO) enumerates the principles of the legislation of the Republic of Azerbaijan on administrative offenses in general. Here, the presumption of innocence is also mentioned as one of the principles on which the administrative offenses legislation is based:

⁴ [Code of Criminal Procedure of the Republic of Azerbaijan \(“e-qanun.az”\)](#)

⁵ [Code of Administrative Offenses of the Republic of Azerbaijan \(e-qanun.az\)](#)

“This Code is based on the principles of respect of rights and freedoms of man and citizen, legality, equality before the law, presumption of innocence, justice and the prevention of administrative offenses.”

The presumption of innocence is reflected in Article 8.1 of the CAO:

“Person concerning whom proceedings about administrative offense are conducted is found not guilty if his guilt is not proved according to the procedure, provided by this Code, and is not established by the become effective decision of the judge, authority (official) who considered proceedings about administrative offense.”

Law of the Republic of Azerbaijan on Media⁶

This Law establishes the organizational, legal, and economic bases of activity in the field of media, as well as the general rules of obtaining, preparing, transmitting, producing, and broadcasting mass information in accordance with items 1, 10, and 13 of Paragraph I of Article 94 of the Constitution of the Republic of Azerbaijan.

Article 14.1.14 of the Law states that information about the guilt of a person should not be published without a legally binding court decision.

At the same time, Article 77.1 stipulates that persons who are guilty of violating the requirements of this Law shall be liable in the cases determined by the Civil Code, the Code of Administrative Offenses, and the Criminal Code of the Republic of Azerbaijan.

Code of Professional Ethics for Journalists of Azerbaijan⁷

On March 15, 2003, at the first congress of the country's journalists, the Azerbaijan Press Council, a self-regulating body of the media created by the establishment of up to 180 mass media, adopted the Code of Professional Ethics for Journalists of Azerbaijan. Paragraph 3.7 of the Code states that the journalist must respect the presumption of innocence and present the person as a suspect and not as a criminal:

3.7. Journalists should respect the right to presumption of innocence of persons who are suspected of committing crimes and should introduce such persons not as criminals, but as persons who have been detained for being suspected of committing crimes.

Although provisions related to the presumption of innocence are reflected in the legislation of the Republic of Azerbaijan, the type of liability for violation of the presumption of innocence is not specified in the legislation. This can also be considered as one of the loopholes in local legislation regarding the presumption of innocence.

⁶ [Law of the Republic of Azerbaijan on Media, Official website of the President of Azerbaijan \(“president.az”\)](http://www.president.az)

⁷ <https://rm.coe.int/azerbaycan-etik-kodeks-yenilenmis-gender/16808eb4fe>

5.3 Presumption of innocence in international law

The Republic of Azerbaijan has joined many international documents related to the presumption of innocence. These include:

Universal Declaration of Human Rights⁸

The declaration was adopted in 1948. At that time, Azerbaijan was part of the USSR, and as the USSR remained neutral to the Declaration, this Declaration was not ratified by Azerbaijan. However, some provisions of the Declaration were reflected in the Constitution of the AR adopted in 1995.

Article 11 of the Declaration defines the presumption of innocence as follows:

“Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.”

International Covenant on Civil and Political Rights⁹

Another document containing human rights is the International Covenant on Civil and Political Rights. The Republic of Azerbaijan joined this Covenant on August 13, 1992. In Article 14 of the Covenant, the presumption of innocence is reflected in this form:

“Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

European Convention on Human Rights¹⁰

The presumption of innocence is reflected in Article 6.2 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, which has an effective protection mechanism for human rights and is considered one of the main regional documents ratified by Azerbaijan on December 25, 2001, as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

Article 6 of the Convention is entitled “Right to a fair trial”. The presumption of innocence is one of the fundamental requirements of the right to a fair trial and can be considered an essentially absolute right.

⁸ [IEPF NGO \(iepf-ngo.org\)](http://iepf-ngo.org)

⁹ [International Covenant on Civil and Political Rights \(“migration.gov.az”\)](http://migration.gov.az)

¹⁰ https://www.echr.coe.int/documents/convention_aze.pdf

It should also be noted that Article 46 of the Convention provides for the binding force and execution of judgments. Violation and non-execution of these judgments act as a basis for taking certain measures against the state.

The protection of the presumption of innocence in the documents that include the presumption of innocence, to which Azerbaijan is also a party, is considered a top priority in the international sphere. We will see this in detail in ECtHR judgments regarding Azerbaijan.

6. General information about ECtHR judgments against Azerbaijan regarding Article 6.2 of the Convention

The Republic of Azerbaijan joined the Convention and its Protocols on December 25, 2001. The Convention does not apply to facts occurring before its entry into force. This comes from the doctrine of non-retroactivity of the Convention. According to Article 59 of the Convention, as regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification. The Convention and its ratified Protocols entered into force in relation to Azerbaijan on April 15, 2002, that is, from the day the ratification document was submitted to the depository. From the date of entry into force of the Convention, persons under the jurisdiction of the relevant state have the right to apply to the ECtHR. According to Article 35 of the Convention, The Court may only deal with the matter after all domestic remedies have been exhausted, and within a period of four months from the date on which the final decision was taken (until February 1, 2022, this period was six months). can do. Since April 15, 2002, the Court has passed 258 judgments against Azerbaijan. 10 of them are related to a violation of Article 6.2 of the Convention. Those judgments are as follows:

Note: All judgments are taken and analyzed from the Hudoc website.

Note: Court judgments are described in chronological order:

1. Avaz Zeynalov v. Azerbaijan
2. Mirgadirov v. Azerbaijan and Turkey
3. Yunusova and Yunusov v. Azerbaijan
4. Farzaliyev v. Azerbaijan
5. Khadija Ismayilova v. Azerbaijan
6. Ilgar Mammadov v. Azerbaijan
7. Huseyn and Others v. Azerbaijan
8. Muradverdiyev v. Azerbaijan
9. Farhad Aliyev v. Azerbaijan
10. Fatullayev v. Azerbaijan

1. **Fatullayev v. Azerbaijan**¹¹

The fact of violation of the presumption of innocence: The applicant complained that the statement made by the Prosecutor General to the press on 31 May 2007 amounted to an infringement of his right to the presumption of innocence.

The Prosecutor General's statement was reported, with almost identical word-for-word quotations, in at least two popular news media outlets. It is true that the statement was very

¹¹ <https://hudoc.echr.coe.int/eng?i=001-98401>

succinct and that it appeared to have been aimed at informing the public about the fact of, and the reasons for, the institution of criminal proceedings against the applicant. Nevertheless, the statement unequivocally declared that the applicant's article published in his newspaper "indeed contain[ed] a threat of terrorism". Moreover, following a brief explanation as to the content of the applicant's publication, the Prosecutor General made a further declaration that "this information constitutes a threat of terrorism". Given the high position held by the Prosecutor General, particular caution should have been exercised in the choice of words for describing the pending criminal proceedings. The Court considers that these specific remarks, made without any qualification or reservation, amounted to a declaration that the applicant had committed the criminal offence of threat of terrorism. Thus, these remarks prejudged the assessment of the facts by the competent judicial authority and could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

The Court's assessment:

The rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. This rule is neither absolute nor capable of being applied automatically. For the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant.

It has been the Court's consistent approach that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence.

The Court notes that in the present case the impugned statement was made by the Prosecutor General in an interview to the press, in a context independent of the criminal proceedings themselves. The Court acknowledges that the fact that the applicant was a well-known journalist required the State officials, including the Prosecutor General, to keep the public informed of the alleged offence and the ensuing criminal proceedings. However, this circumstance cannot justify the lack of caution in the choice of words used by officials in their statements.

The Court's judgment:

The respondent State is to pay the applicant EUR 25,000 in respect of non-pecuniary damage and EUR 2,822 in respect of costs and expenses, thus EUR 27,822 in total.

2. Farhad Aliyev v. Azerbaijan¹²

The fact of violation of the presumption of innocence: The applicant complained that the joint statements made by the Prosecutor General's Office, the Ministry of National Security, and the Ministry of Internal Affairs to the press on 20 and 21 October 2005 had amounted to an infringement of his right to the presumption of innocence. He also complained that, subsequently during the course of the pre-trial investigation, various public officials, including the President of Azerbaijan and the Prosecutor General, had made public statements describing him as a criminal. Lastly, he complained that, in the decisions ordering and extending his pre-trial detention, the domestic courts had also breached his presumption of innocence by prejudging his guilt before he had been proved guilty following a criminal trial.

The statement of law enforcement bodies dated 20 October 2005 went on to declare that "... it was also established that Farhad Aliyev, having abused his official authority and committed serious breaches of the law during the process of privatisation of State property, had procured documents of title to State property at negligible prices and formally registered the property in the name of his relatives and acquaintances, and thus de facto transferred it into his ownership".

Similarly, both statements of 20 and 21 October 2005 declared that, as a result of the searches of various premises belonging to the applicant, the authorities had "seized large amounts of foreign currency, jewellery, works of art and other valuable items obtained in a criminal manner".

The Court's assessment:

In so far as the applicant complained of a breach of the presumption of his innocence by the domestic courts in their decisions ordering and extending his pre-trial detention, the Court, having carefully examined the original texts of the relevant decisions (rather than the English translations procured by and relied on by the applicant), finds that none of them contained any wording that could be interpreted as prematurely declaring the applicant guilty of the offences that he was charged with. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

The Court not only prohibits the premature expression by the tribunal itself of the opinion that the person "charged with a criminal offence" is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, 25 March 1983, § 38, Series A no. 62), but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority.

¹² <https://hudoc.echr.coe.int/eng?i=001-101682>

It has been the Court's consistent approach that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law.

The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence.

The Court notes that in the present case the impugned statements were made to the press, in a context independent of the criminal proceedings themselves. The Court acknowledges that the fact that the applicant, as Minister for Economic Development, was a high-ranking State official may have required the authorities to keep the public informed of the criminal accusations against him and the ensuing criminal proceedings. However, this circumstance cannot justify the lack of caution in the choice of words used by the authorities in their statements.

Given that the above official statements were made jointly by three different law-enforcement bodies competent to conduct a criminal prosecution on behalf of the State, particular caution should have been exercised by them in the choice of words to describe the pending criminal proceedings. The Court considers that those statements, made without the necessary qualifications or reservations, contained wording amounting to a declaration that the applicant had committed certain criminal offences. As such, they prejudged the assessment of the facts by the competent judicial authority and could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

The Court's judgment:

The respondent State is to pay the applicant EUR 16,000 in respect of non-pecuniary damage and EUR 25,000 in respect of costs and expenses, thus EUR 41,000 in total.

3. Muradverdiyev v. Azerbaijan¹³

The fact of violation of the presumption of innocence: The applicant complained that the joint statement made by the Prosecutor General's Office, the Ministry of National Security, and the Ministry of Internal Affairs to the press on 25 October 2005 had amounted to an infringement of his right to the presumption of innocence. He also complained that, in the decisions of 14 January 2006 of the Nasimi District Court and of 10 February 2006 of the Court of Appeal ordering and extending his pre-trial detention, the domestic courts had also breached his presumption of innocence by prejudging his guilt before he was proved guilty at the outcome of the criminal trial.

The Court's assessment:

¹³ <https://hudoc.echr.coe.int/eng?i=001-102142>

The Court notes that in the present case the impugned statement was made to the press, in a context independent of the criminal proceedings themselves. The Court acknowledges that the fact that the applicant, as former Head of the Administrative Department of the Office of the President, was a high-ranking State official may have required the authorities to keep the public informed of the criminal accusations against him and the ensuing criminal proceedings. However, this circumstance cannot justify a lack of caution in the choice of words used by the authorities in their statement.

Having examined the text of the joint statement, the Court considers that, from the very beginning, the wording used was imperative and affirmative. In particular, it was stated that “it has been established that Akif Muradverdiyev ... and Fikret Sadygov ... conspired with Rasul Guliyev ..., as well as with ... Ali Insanov, ... Farhad Aliyev, ... Fikret Yusifov and other persons interested in capturing power by force. During their secret meetings ..., they agreed on the unlawful usurpation of State power, the organisation of sabotage groups recruited for planned mass disorder and the financial support for these activities”.

The Court considers that these remarks made by three law-enforcement authorities in their joint statement, made without any reservation or circumspection, were in disregard of the applicant's presumption of innocence.

Given that the above official statement was made jointly by three different law-enforcement bodies competent to conduct criminal prosecution on behalf of the State, particular caution should have been exercised by them in the choice of words used to describe the pending criminal proceedings. The Court considers that that statement, made without the necessary qualifications or reservations, contained wording amounting to a declaration that the applicant had committed certain criminal offences. As such, they prejudged the assessment of the facts by the competent judicial authority and could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

The Court's judgment:

The Court declares the complaints under Article 5 § 3 and Article 6 § 2 concerning the lawfulness of the applicant's continued pre-trial detention and his right to the presumption of innocence in respect of the joint statement of three law-enforcement authorities admissible and the remainder of the application inadmissible.

4. Panah Huseyn and Others v. Azerbaijan¹⁴

The fact of violation of the presumption of innocence: The applicants further complained that the various public statements made by the State authorities and high-ranking State officials prior to their conviction by the competent court had infringed their right to the presumption of innocence secured in Article 6 § 2 of the Convention.

¹⁴ <https://hudoc.echr.coe.int/eng?i=001-105823>

In his different statements, the Head of the Sabail District Police Office unequivocally asserted that the demonstrators had “committed terrible criminal acts” under direct orders from the fourth applicant and two other opposition leaders, all of whom were clearly identified by their name. For his part, the Deputy Minister of Internal Affairs clearly mentioned all of the applicants by name as persons who had overseen the “actions of criminal character” committed by the “radical”, “reactionary” and “destructive” opposition and aimed at usurping State power by unlawful means. The entire article authored by the Deputy Minister of Internal Affairs was notable for the repeated and persistent use of the words “crime” and “criminal” in referring to the opposition and its leaders and the specific actions attributed to them.

The Court's assessment:

The Court not only prohibits the premature expression by the tribunal itself of the opinion that the person “charged with a criminal offence” is guilty before he has been so proved according to law, but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority.

In the present case, the applicants complained of various statements made by numerous authorities and State officials. The Court considers that, for the purposes of the analysis under Article 6 § 2 of the Convention, it will be sufficient to have regard only to the statements made by the law-enforcement authorities, namely the press statements by the Ministry of Internal Affairs and the Prosecutor General’s Office and the declarations made by two high-ranking police officials.

Given that the above statements were made by law-enforcement authorities and their high-ranking officials, particular caution should have been exercised by them in the choice of words to describe the pending criminal proceedings and the events that led to the applicants’ prosecution. The Court considers that those statements, made without necessary qualifications or reservations, contained wording amounting to an express and unequivocal declaration that the applicants had committed criminal offences. As such, they prejudged the assessment of the facts by the competent judicial authority and could not but have encouraged the public to believe the applicants guilty before they had been proved guilty according to law.

The Court's judgment:

The respondent State is to pay:

- EUR 10,000 to each applicant in respect of non-pecuniary damage;
- EUR 3,200 to the first and fourth applicants, Mr Huseyn and Mr Mammadov, jointly, in respect of the legal services provided by Mr F. Agayev;

- EUR 1,500 to the second applicant, Mr Abbasov, in respect of the legal fees incurred in the proceedings before the Court;
- EUR 3,000 to the third applicant, Mr Hajili, in respect of the costs and expenses in the proceedings before the Court.

5. Ilgar Mammadov v. Azerbaijan¹⁵

The fact of violation of the presumption of innocence: The applicant complained that the joint press statement of the Prosecutor General's Office and the Ministry of Internal Affairs of 29 January 2013 had infringed his right to the presumption of innocence. The impugned statement was published on 29 January 2013, before the applicant was arrested and formally charged with criminal offences on 4 February 2013. Whereas in the end of the relevant paragraph the authorities noted that the applicant's actions would be "fully and thoroughly investigated and [would] receive legal assessment", this wording was negated by a preceding unequivocal declaration, contained in the same sentence, that those actions by the applicant had been "illegal". Moreover, by stating in the same paragraph that "it has been established that ... [the applicant] ... made appeals to local residents ..., such as calls to resist the police, not to obey officials and to block roads", the authorities essentially prejudged the assessment of the facts by the courts.

The Court's assessment:

It has been the Court's consistent approach that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. Given that the applicant was a politician, the authorities might have considered it necessary to keep the public informed of the criminal accusations against him. However, the Court considers that the statement, assessed as a whole, was not made with necessary discretion and circumspection. As such, the impugned statement could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

The Court's judgment:

The respondent State is to pay the applicant EUR 20,000 in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses, thus EUR 22,000 in total.

6. Khadija Ismayilova v. Azerbaijan¹⁶

The fact of violation of the presumption of innocence: The applicant complained under that the decisions of the domestic courts extending her detention and the statement made by the Prosecutor General's Office had infringed her right to the presumption of innocence. On 6

¹⁵ <https://hudoc.echr.coe.int/eng?i=001-144124>

¹⁶ <https://hudoc.echr.coe.int/eng?i=001-201340>

December 2014, following the applicant's arrest, the Prosecutor General's Office made a public statement entitled "Illegal acts of Khadija Ismayilova have been unmasked".

The Court's assessment:

According to the ECtHR, the similar choice of words used by the Prosecutor's General's Office in its statement had been found by the Court to be problematic. Specifically, the title of the impugned statement in the present case indicated that the applicant's "illegal acts had been unmasked", which amounted to a clear declaration of her guilt.

Furthermore, it was noted in the text that "the investigation ha[d] established that T.M. attempted to commit suicide as a result of threats and pressure used by the applicant". The Court would stress in this regard that a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question

The Court notes that this duty to inform the public cannot justify all possible choices of words, but has to be carried out with a view to respecting the right of the suspects to be presumed innocent.

The Court finds that the statement must have led the public to believe that the applicant was guilty before she had been proved guilty according to law.

The Court's judgment:

The respondent State is to pay the applicant EUR 20,000 in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses, thus EUR 25,000 in total.

7. Farzaliyev v. Azerbaijan¹⁷

The fact of violation of the presumption of innocence: The applicant complained that the domestic courts in the civil proceedings had breached his right to presumption of innocence by declaring him guilty of having committed a criminal offence. By its judgment of 8 May 2006, the Nasimi District Court's ruling on the civil claim stated that an amount of AZN 2,327,059 had been "embezzled" and that, even though the defendants had been absolved of criminal liability by way of discontinuation of the criminal proceedings owing to the expiry of the limitation period, "the damage caused as a result of the criminal offence" was not compensated for.

As the Convention clearly states, Article 6 § 2 is applied when a person is "charged with a criminal offence".

¹⁷ <https://hudoc.echr.coe.int/eng?i=001-202532>

The Court's assessment:

The presumption of innocence will be violated if, without the accused's having previously been proved guilty in accordance with the law and, in particular, without his or her having had the opportunity to exercise his or her rights of defence, a judicial decision concerning him or her reflects an opinion that he or she is guilty.

Without protection to ensure respect for the acquittal or the discontinuance decision in any other proceedings, the fair-trial guarantees of Article 6 § 2 could risk becoming theoretical and illusory. What is also at stake once the criminal proceedings have concluded is the person's reputation and the way in which that person is perceived by the public.

Extra care ought to be exercised when formulating the reasoning in a civil judgment after the discontinuation of criminal proceedings.

The Court has found that the presumption of innocence was violated in situations where the civil courts held that it was "clearly probable" that the applicant had committed a criminal offence or expressly indicated that the available evidence was sufficient to establish that a criminal offence had been committed.

The Court's judgment:

The respondent State is to pay the applicant EUR 4,700 in respect of non-pecuniary damage and EUR 1,500 in respect of costs and expenses, thus EUR 6,200 in total.

8. Yunusova and Yunusov v. Azerbaijan¹⁸

The fact of violation of the presumption of innocence: The applicants complained that the joint press statement of the Prosecutor General's Office and the Ministry of National Security had infringed their right to the presumption of innocence. This statement was published during the pre-trial proceedings - preliminary investigation. The statement reads:

"It has been established that [the first applicant] since 2012 under the disguise of the joint projects carried with [various individuals based in Armenia] in the context of "people's diplomacy"... recruited [R.M.] for espionage to the detriment of the national security of the Republic of Azerbaijan and together with [the second applicant] organised [R.M.]'s trips to the Republic of Armenia.

During some of these trips [the second applicant] together with [R.M.] organised meetings with [D.Sh.], the former minister of national security of the Republic of Armenia, and representatives of other organisations operating under control of secret services.

¹⁸ <https://hudoc.echr.coe.int/eng?i=001-203562>

Moreover, [the applicants] in order to involve to secret cooperation certain citizens of the Republic of Azerbaijan, whose names cannot be disclosed at present, fulfilled their task by giving instructions to collect information concerning the current situation in socio-political, energy, industrial areas and military equipment supplies ...

As a result, they transferred through [R.M.] to the representatives of the secret services of the enemy state photographs of the concrete locations of military bases, airports and other strategic public infrastructures.

In addition, [the first applicant]... by acquiring profit in the total amount of 526,943 [Azerbaijani] manats under the grant agreements, which she failed to register with the state authorities, carried out illegal entrepreneurship and avoided payment of taxes on a very large scale to the state budget due in accordance with tax legislation in the total amount of 369,378 manats.

At the same time, there is a reasonable suspicion that [the applicants] took possession by abuse of trust by withdrawing 88,468 USD dollars from the [AWPDT]'s bank account...and placing it [to their personal bank accounts].

In order to question [the applicants] concerning the indicated circumstances, it has been decided to bring [the applicants] by force before the investigating authority because they failed to appear on multiple occasions...

[The applicants'] rights to legal aid ... were respected.

At present, the criminal investigation and the legal assessment of all actions is under way and the public will be informed of its results."

The Court's assessment:

The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question.

However, this duty to inform the public cannot justify all possible choices of words, but has to be carried out with a view to respecting the right of the suspects to be presumed innocent.

The Court's judgment:

The respondent State is to pay the applicant EUR 20,000 in respect of non-pecuniary damage and EUR 11,438 in respect of costs and expenses, thus EUR 31,438 in total.

9. Mirgadirov v. Azerbaijan and Turkey¹⁹

The fact of violation of the presumption of innocence: The applicant complained that the joint statement made by the Prosecutor General's Office and the Ministry of National Security on 17 July 2014 had infringed his right to the presumption of innocence. This statement was published during the pre-trial proceedings - preliminary investigation. The statement unequivocally indicated that he had transmitted information containing State and military secrets to the Armenian intelligence services.

The Court's assessment:

The Court points out that it has already found a breach of Article 6 § 2 of the Convention in a number of cases against Azerbaijan on account of the choice of words used by the investigating authorities in their statements to the press which prejudged the assessment of facts.

The Court considers that the statement, assessed as a whole, was not made with the necessary discretion and circumspection. Although the first and second paragraphs of the statement did not use any wording presenting the applicant as guilty, but contained brief information about the accusations against him when he had been arrested and placed in pre-trial detention in April 2014, subsequent paragraphs of the statement unreservedly attributed various criminal acts to the applicant.

The Court's judgment:

The Azerbaijani Government is to pay the applicant EUR 20,000.

10. Avaz Zeynalov v. Azerbaijan²⁰

The fact of violation of the presumption of innocence: The applicant complained that the statement made in the Baku Court of Appeal's decision of 8 December 2011 had infringed his right to the presumption of innocence. It was committed by using the expression "the degree of public dangerousness of the criminal offence committed by [the applicant]".

The Court's assessment:

The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before his guilt has been proved according to law.

¹⁹ <https://hudoc.echr.coe.int/eng?i=001-204584>

²⁰ <https://hudoc.echr.coe.int/eng?i=001-209346>

The Court deems that in the present case the impugned statement was not limited to describing a “state of suspicion” against the applicant, but represented the applicant as a person who had committed a criminal offence without any qualification or reservation.

The Court observes that none of the subsequent decisions of the domestic courts made any attempt to correct the relevant wording of the Baku Court of Appeal’s decision of 8 December 2011.

The Court finds that the impugned statement amounted to a declaration of the applicant’s guilt, in the absence of a final conviction, and breached his right to be presumed innocent.

Two factors led the Court to vote in favour of a violation.

Firstly, the statement was made by a court of appeal, not merely by an official, and one which should have known the Convention standards by which such a statement would be judged. Statements by judges are subject to stricter scrutiny than those by investigative authorities (see *Pandy v. Belgium*, no. 13583/02, § 43, judgment of 21 September 2006).

Secondly, and most importantly, that court order reflected a sort of “template” reasoning, such that, were the Court not to point out the error it contained, there is a risk that such standard expressions would continue to be repeated without due regard to the requirements of the presumption of innocence.

The Court's judgment:

The respondent State is to pay the applicant EUR 10,000 in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses, thus EUR 13,000 in total.

7. Status of execution of court judgments against Azerbaijan regarding Article 6.2

1. Fatullayev v. Azerbaijan²¹

In the case of Fatullayev v. Azerbaijan, the ECtHR recognized the violation of Article 6.2 as well as Articles 10 and 6.1 of the Convention and emphasized that the Government should pay the applicant a total of 27,822 euros. The final session of the Court related to this case was held on 04.10.2010. The Government has not provided the Court with any information regarding the payment of compensation. The judgment has not yet been executed. The Government has not submitted an Action Plan either.

2. Farhad Aliyev v. Azerbaijan²²

In the case of Farhad Aliyev v. Azerbaijan, the ECtHR recognized the violation of Article 6.2 as well as Article 5.1, 5.3, and 5.4 of the Convention, and emphasized that the Government should pay the applicant a total of 41,000 euros. The final session of the Court related to this case was held on 09.02.2011. On 07.12.2011, the Government paid the compensation for the damage caused to the applicant. However, the case is still in the execution stage, the execution period has not expired, and no updated Action Plan has been submitted by the Government.

3. Muradverdiyev v. Azerbaijan²³

In the case of Muradverdiyev v. Azerbaijan, the ECtHR recognized the violation of Article 6.2 as well as Article 5.3 of the Convention. However, the judgment did not include any information about compensation. In this case, the applicant did not make any request for the determination of the just satisfaction - compensation. The court also accepted it as not necessary to assign any amount to him. The final judgment of the Court regarding this case was made on 14.04.2011.

4. Huseyn and Others v. Azerbaijan²⁴

In the case of Huseyn and Others v. Azerbaijan, the ECtHR, recognizing the violation of Article 6.2 as well as Article 6.1 and 6.3(b), 6.3(c), and 6.3(d) of the Convention, emphasized that the Government should pay 10,000 euros to each applicant (there are four applicants in this case) for non-pecuniary damage, 3,200 euros to the first and fourth applicants, 1,500 euros to the second applicant, and 3,000 euros to the third applicant for legal service costs. The final judgment of the Court regarding this case was made on 26.10.2011. On 15.02.2012,

²¹ <https://hudoc.exec.coe.int/eng?i=004-1727>

²² <https://hudoc.exec.coe.int/eng?i=004-1629>

²³ <https://hudoc.exec.coe.int/eng?i=004-1824>

²⁴ <https://hudoc.exec.coe.int/eng?i=004-1822>

the Government paid compensation for the damage caused to the applicants. The case is still in the execution stage. The government has not submitted an updated Action Plan to the Court.

5. Ilgar Mammadov v. Azerbaijan²⁵

In the case of Ilgar Mammadov v. Azerbaijan, the ECtHR recognized the violation of Article 6.2 as well as Article 18 taken in conjunction with Article 5, 5.1(c), and 5.4 of the Convention and emphasized that the Government should pay a total of 22,000 euros to the applicant. The final judgment of the Court regarding this case was made on 01.09.2020. On 06.04.2017, the Government paid compensation for the damage caused to the applicant. The government has submitted an Action Plan on the case. Furthermore, the Plenum of the Supreme Court of the Republic of Azerbaijan acquitted Ilgar Mammadov on April 23, 2020, and determined compensation for non-pecuniary damage.

6. Khadija Ismayilova v. Azerbaijan²⁶

In the case of Khadija Ismayilova v. Azerbaijan, the ECtHR, recognizing the violation of Article 6.2 as well as Article 18 taken in conjunction with Article 5, 5.1(c), and 5.4 of the Convention, emphasized that the Government should pay a total of 25,000 euros to the applicant. The representative of the applicant party stated in the communication submitted at the meeting No. 1411 on 17.06.2021 that only a part of the compensation (9,000 euros) was paid to the applicant by the Government, and no other measures have been taken. So, despite recognition of her violated rights by the ECtHR, the applicant is still being persecuted as a journalist, and the Government has still not withdrawn the allegations of tax evasion and illegal entrepreneurship against her. In its communication submitted on 25.05.2021, the Government noted that the arrest on the applicant's bank accounts was lifted after the payment of Khadija Ismayilova's debts, and the 5-year ban on leaving the country was canceled on 25.05.2021 after the probationary period ended. Regarding the issue of compensation, the applicant party noted that out of the 25,000 euros to be paid to her, 9,000 euros were paid first, and the compensation was fully paid in March 2022. However, not only general but also individual measures of the Government regarding this judgment have not been fully executed.

The Committee of Ministers of the Council of Europe (CM CoE) at its meeting No. 1436 dated June 8-10, 2022, also reviewed the status of execution of the cases, in which Khadija Ismayilova participated as an applicant, and noted in its adopted resolution that the Government of Azerbaijan should renew the investigation of the crimes she was subjected to and take all steps to bring the criminals to responsibility. Moreover, the CM CoE urged the authorities to provide information on whether the applicant's disseminated personal information has been removed from publicly available resources, to take measures aimed at

²⁵ <https://hudoc.exec.coe.int/eng?i=004-1866>

²⁶ <https://hudoc.exec.coe.int/eng?i=004-55595>

improving the practice of local courts in ensuring the balance between the right to respect for private life and reputation and the right to freedom of expression, and to present the latest situation regarding the implementation of these issues by the December 2022 meeting of the Committee.

7. Farzaliyev v. Azerbaijan²⁷

In the case of Farzaliyev v. Azerbaijan, the ECtHR, recognizing the violation of Article 6.2 as well as Article 6.1 of the Convention, emphasized that the Government should pay the applicant a total of 6,200 euros. The final session of the Court related to this case was held on 28.08.2020. On 01.09.2021, the Government fully paid the compensation for the damage caused to the applicant. However, the case is still in the execution stage, the execution period has not expired, and the Action Plan has not been submitted by the Government.

8. Yunusova and Yunusov v. Azerbaijan²⁸

In the case of Yunusova and Yunusov v. Azerbaijan, the ECtHR, recognizing the violation of Article 6.2 as well as Articles 5.1, 5.1(c), 5.4, and 8 of the Convention, Article 1 of Protocol No. 1, Article 13 taken in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4, and Article 18 taken in conjunction with Article 5, emphasized in its judgment that the Government should pay a total of 31,438 euros to the applicants. The final session of the Court related to this case was held on 16.10.2020. Although compensation was paid to the applicants by the Government on 03.03.2021, other measures regarding the status of execution of the case have not yet been implemented. In the Action Plan submitted by the Government of Azerbaijan, only the name of this case was mentioned, that is, the execution of specific individual measures related to the case was not envisaged.

9. Mirgadirov v. Azerbaijan and Turkey²⁹

In the case of Mirgadirov v. Azerbaijan, the ECtHR recognized the violation of Article 6.2 as well as Articles 5.1, 5.1(c), 5.4, and 8 of the Convention and emphasized that the Government should pay a total of 20,000 euros to the applicant. The final session of the Court related to this case was held on 17.12.2020. On 01.09.2021, the Government paid full compensation for the damage caused to the applicant. However, the case is still in the execution stage, the execution period has not expired, and the Action Plan has not been submitted by the Government.

10. Avaz Zeynalov v. Azerbaijan³⁰

²⁷ <https://hudoc.exec.coe.int/eng?i=004-55811>

²⁸ <https://hudoc.exec.coe.int/eng?i=004-56219>

²⁹ <https://hudoc.exec.coe.int/eng?i=004-56531>

³⁰ <https://hudoc.exec.coe.int/eng?i=004-58187>

In the case of *Avaz Zeynalov v. Azerbaijan*, the ECtHR, recognizing the violation of Article 6.2 as well as Articles 5.3, 6.1, 6.3(d), 8, and 10 of the Convention, emphasized in its judgment that the Government should pay the applicant 10,000 euros for non-pecuniary damage and 3,000 euros for costs and expenses, thus 13,000 euros in total. The final session of the Court related to this case was held on 22.07.2021. On 23.03.2022, the Government paid full compensation for the damage caused to the applicant. However, the case is still in the execution stage, the execution period has not expired, no Action Plan has been submitted by the Government, and no other individual or general action has been taken.

8. Conclusion and recommendations

During the preparation of the report, as a result of the study of ten judgments, it became clear that the compensations determined in eight judgments were paid to the applicants in full, no compensation was determined in one judgment (Muradverdiyev v. Azerbaijan), and the Government did not provide any information to the Court regarding the payment of compensation in one judgment (Fatullayev v. Azerbaijan).

Out of the ten studied in eight judgments, the Government submitted an Action Plan to the Court for only two judgments. It seems that although the Government focused on the payment of compensation in connection with the execution of judgments, the execution of other measures took a back seat. During the study, it became clear that there are certain problems not only in the execution of judgments but also in the mechanism of execution of judgments. So, there is no government body specifically responsible for ECtHR judgments. In fact, there is a need to create such a body. Moreover, the activities of this body should be open to the applicants, their representatives, and society as a whole. These two issues ultimately prevent the full execution of the presumption of innocence in Azerbaijan and ultimately lead to the non-execution of judgments passed by the Court.

In the 2021 ranking of Council of Europe member countries related to the execution of judgments, the Republic of Azerbaijan is in 5th place with 271 unexecuted judgments. 222 of these judgments are on repetitive cases, and 49 are on leading cases. The aihmaz.org website notes that when the execution of general judgments issued by countries is calculated as a percentage, Azerbaijan ranks 1st in terms of unexecuted judgments.³¹

The main reason for the above is the state's disregard for ECtHR judgments, the lack of a unified mechanism for the execution of judgments, and gaps in local legislation.

³¹ [Execution of European Court judgments, 2021 – how does the countries execute the judgments? – aihmaz.org](https://aihmaz.org/execution-of-european-court-judgments-2021-how-does-the-countries-execute-the-judgments/)

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Reference to IDI is compulsory when using information.

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