

**REPORT ON THE STATUS OF
IMPLEMENTATION OF ECHR
DECISIONS AGAINST
AZERBAIJAN ON THE RIGHT TO
RESPECT FOR PRIVATE AND
FAMILY LIFE
(CONVENTION, ARTICLE 8)**



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ECHR DECISIONS AGAINST AZERBAIJAN
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1. Summary

One of the main tasks of the state of law is to protect the right to respect for private and family life, both at the level of local and international legislation. The Republic of Azerbaijan, as a state that has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, is also obliged to ensure the right to respect for private and family life. This obligation must be performed within the standards set out in Article 8 of the Convention. The European Court of Human Rights (ECtHR) has found a violation of Article 8 in 16 cases against Azerbaijan since the first judgment was made against Azerbaijan in violation of Article 8, according to statistics from 2014 to 2021.

During the preparation of the report, the right to respect for private and family life and the guarantees of this right, as well as the legal force of ECtHR judgments were considered, and local and international legislation in this area were analyzed.

In the introductory part of the report, the concepts provided for in Article 8 of the Convention are analyzed separately, and in general, the place, role, and importance of this right in human life are studied. The methodology section traditionally provides information on the methodology of the report.

The next section analyzes private and family life, as well as local and international legislation related to the legal force of the Court's judgments and their execution, and notes gaps in some legislative acts.

The next parts of the report are devoted to a brief description of ECtHR judgments against Azerbaijan under this article, as well as the status of execution of these judgments and the general and individual measures taken by the Government to execute them. As a result of the study, it became clear that in 2021, Azerbaijan ranked fifth among the countries that did not execute the Court's judgments. Moreover, only four of the judgments made under this article were relatively executed, three were not executed, and the execution of other judgments consisted only of compensation.

In the conclusion section, it became clear that there are gaps in the execution of judgments in Azerbaijan, and it has been determined that the main reasons for this are that there is no single body at the state level to execute and monitor the execution of ECtHR judgments, that this issue is resolved immethodically, that the execution of judgments by the Government is carried out in the simplest way, through the payment of compensation, and that sufficient steps are not taken to improve legislation and practice.

These issues are reflected in more detail in the report and the following recommendations are made:

- 1) Legislation must be brought into line with international standards;
- 2) A body should be established to monitor the execution of ECtHR judgments;
- 3) Trainings should be organized to periodically educate judges and law enforcement officers on Article 8 of the ECHR.

2. Introduction

Human is, by nature, a social being. Throughout history, it has formed in society and has always lived among other people. However, this does not mean that human life consists only of society and the collective. It is an undeniable fact that a person who spends his life in society has a unique life. International law has defined this life of human in the form of private and family life.

Article 8 of the European Convention on Human Rights (ECHR) is entitled "The right to respect for private and family life". Article 8.1 of the Convention states:

Everyone has the right to respect for his private and family life, his home and his correspondence.

However, the right enshrined in Article 8 is a relative right, not an absolute right. That is, the Convention stipulates that in certain cases, the government may interfere with this right of a person. The second paragraph of this article defines the circumstances in which this right may be infringed or restricted. So, Article 8.2 states:

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The purpose of reflecting the right to respect for private and family life in the Convention is to protect individuals from unlawful acts by public authorities in this context. However, we must first know what the right provided for in this article contains and why Article 8 is important in general.

Part 1 of Article 8 protects four independent values. These are a) private life, b) family life, c) inviolability of home, and d) inviolability of correspondence. Below is a relatively broad explanation of each of these concepts, their scope, etc.

First, about private life.

In its precedent judgments, while defining private life, the ECtHR notes that private life is a broad and non-specific term that cannot be clearly defined and that the term may include many aspects of an individual's social and physical identity. Therefore, although the scope of this article of the Convention specifies the rights to "private life, family life, home, and correspondence", this list is not specific and cannot be limited to an "inner circle".

The ECtHR does not equate the terms private life and personal life and states that private life is a broader concept that includes the right to personal development, as well as the right to establish and develop relationships with other human beings and the outside world, and so on.

If we look at the case law established by the Court, we can see that in its practice, the ECtHR has attributed the physical and moral inviolability of a person, features that identify him as an individual, his right to photos and photographs, his reputation, religion, ethnicity, and nationality, etc. to private life. The scope of this list is not specific, and a specific violation of the right to private life that is not mentioned here may also be recognized under Article 8 of the Convention.

The notion of “family life” is an autonomous concept. The ECtHR notes in the case of *Paradiso and Campanelli v. Italy*¹ that whether or not family life exists is essentially a question of fact depending upon the real existence in practice of close personal ties. According to the Court’s precedents, the family is not limited to marriage-based families and may include other factual relationships.

The ECtHR states in its precedent judgments that the notion of “home” is an autonomous concept which does not depend on the classification under domestic law (*Chiragov and Others v. Armenia*², § 206). According to the Court, the notion of "home" is not limited to property of which the applicant is the owner or tenant. It may extend to long-term occupancy, on an annual basis, for long periods, of a house belonging to a relative (*Menteş and Others v. Turkey*³, § 73), may be claimed by a person living in a flat whose lease is not in his or her name, or may apply to a council house occupied for several years. In its judgment in the case of *Chapman v. the United Kingdom*, the ECtHR noted that the term "home" is not limited to traditional residences. It therefore includes, among other things, caravans, and other unfixed abodes, as well as cabins or bungalows stationed on land, regardless of the question of the lawfulness of the occupation under domestic law. This concept even extends to an individual’s business premises where the person works or conducts a business.

Article 27 of the Civil Code of the Republic of Azerbaijan defines the place of residence and states that the place of residence of an individual is usually considered to be the place where an individual lives. A person may have several residences.

In the case of *Niemietz v. Germany*⁴, the ECtHR noted that the term "correspondence" obviously covers letters of a private or professional nature. According to the Court's position, the concept of "inviolability of correspondence" under Article 8 of the Convention also applies to telephone conversations between family members or other persons, telephone calls from private or business premises, as well as from prisons, as well as the “interception” of information relating to such conversations (date, duration, numbers dialled).

Apparently, an individual's private and family life, home, and correspondence are directly related to his personality and are related to his physical and spiritual integrity. Therefore, it is the duty of

¹ <https://hudoc.echr.coe.int/eng?i=001-170359>

² <https://hudoc.echr.coe.int/fre?i=001-155353>

³ <https://hudoc.echr.coe.int/rus?i=001-58120>

⁴ <https://hudoc.echr.coe.int/eng?i=001-57887>

the state to protect each person from any threats and interference in his identity and existence, fundamental values. The right to respect for private and family life is not only a negative obligation that prevents the state from taking certain steps but also imposes a positive obligation on the state to ensure the right to respect for private life.

Positive obligation means the fundamental steps taken by the state to protect human rights and freedoms. In this sense, positive obligations differ from negative obligations, which envisage steps that the state "should refrain from" and "should not take". However, as noted earlier, the right enshrined in Article 8 may be restricted by the state as a relative right, provided that these restrictions meet the conditions of the three-stage test principle ("in accordance with the law", "legitimate aim", and "necessary in a democratic society") established by the ECtHR.

The report specifically aims to analyze the status of execution of judgments recognizing the violation of the rights enshrined in Article 8 in relation to the Republic of Azerbaijan, rather than these rights.

Since the accession of the Republic of Azerbaijan to the European Convention on Human Rights, its Protocols, and the jurisdiction of the Court, more precisely, since the entry into force of these acts in relation to Azerbaijan (April 15, 2022), the ECtHR has adopted a total of 258 judgments on Azerbaijan, and 96 cases were settled amicably. 16 of these judgments are related to the violation of Article 8. The study will analyze the execution of those judgments. The aim is to draw attention once again to the importance of Article 8, to examine the status of execution of judgments against Azerbaijan under this article, what measures have been taken in this direction in the country after ECtHR judgments, and whether there is progress.

3. Methodology

During the preparation of the report, local and international legislation on the right to respect for private and family life, including the execution of ECtHR judgments regarding Article 8, was considered to assess the current situation, the information of the Committee of Ministers of the Council of Europe on the execution of judgments was referred to, information published in the media and various websites were examined, and information requests were sent to two bodies (the Supreme Court and the Presidential Administration) and some advocates. The obtained data were evaluated by analysis-synthesis and comparative analysis methods.

4. Abbreviations

1. AR – Republic of Azerbaijan
2. CrC – Criminal Code of the Republic of Azerbaijan
3. CCrP – Code of Criminal Procedure of the Republic of Azerbaijan
4. CCiP – Code of Civil Procedure of the Republic of Azerbaijan
5. CiC – Civil Code of the Republic of Azerbaijan
6. ECHR (or Convention) – European Convention on Human Rights
7. ECtHR (or Court) – European Court of Human Rights
8. CM CoE (or Committee) – Committee of Ministers of the Council of Europe

5. Monitoring of legislation

5.1. Local legislation:

The main local legal framework governing the rights provided for in Article 8 of the ECHR is the Constitution of the Republic of Azerbaijan and the Criminal Code. In addition, some laws of the Republic of Azerbaijan contain provisions that reflect a person's private and family life, his personal inviolability, and other such rights. These laws include the Law on Detective-Search Activity, the Law on Personal Data, the Law on Biometric Information, and the Law on Police.

The legislation emphasizes the importance of the inviolability of private and family life and other related rights and provides for criminal liability for violation of these rights. Furthermore, the Code of Criminal Procedure and the Code of Civil Procedure of the Republic of Azerbaijan state that decisions made by the ECtHR should be reconsidered by local courts.

The AR Constitution⁵

The Constitution, which is the basic law, reflects the basic rights of man and citizen, such as the **right to inviolability of private life (Article 32)** and the **right to inviolability of home (Article 33)**. Article 32 states that everyone has the right for confidentiality of his/her private and family life. Except in cases prescribed by law, interference with private or family life is prohibited.

The right to inviolability of private life also means that the collection, storage, use, and dissemination of information concerning a person's private life is not permitted without his/her consent. Moreover, everyone may become familiar with the materials collected in regards to him/her except in cases prescribed by law and demand correction or elimination of the information collected in regard to him/her, which does not correspond to the truth.

Furthermore, according to the Constitution, the state guarantees everyone's right to confidentiality with respect to correspondence, telephone communications, post, telegraph messages, and information sent by other communication means. This right might be restricted, as prescribed by law, in order to prevent crime or to determine the facts in the course of investigation of a criminal case.

Article 33 of the Constitution guarantees the right of a person to inviolability of home. The article states that everyone has the right to inviolability of his/her home and that no one has the right to enter private home against the will of its inhabitants.

⁵ The Constitution of the Republic of Azerbaijan, <https://e-qanun.az/framework/897>

The fact that the rights provided for in Article 8 of the Convention are reflected in the AR Constitution and the establishment of prohibitions reaffirm the importance of private and family life and show that the state has certain obligations in this area.

So, according to Article 12.2 of the AR Constitution, rights and liberties of a person and a citizen listed in the present Constitution are applied in accordance with international treaties to which the Republic of Azerbaijan is a party.

According to Article 71 of the AR Constitution, which guarantees for rights and freedoms of man and citizen, the legislature, executive, and judiciary shall have the duty to observe and to protect the rights and freedoms of man and citizen set forth in the Constitution. No one may restrict exercise of rights and freedoms of a man and citizen. Everyone's rights and freedoms shall be restricted on the grounds provided for in the present Constitution and laws, as well as by the rights and freedoms of others. Restriction of rights and liberties shall be proportional to the result expected by the state.

Criminal Code ⁶

Articles 155, 156, 157, 158, 271, 272, and 273 of the CrC provide for criminal liability in the context of the inviolability of private and family life and other related rights, and these rights are protected under the threat of punishment.

Article 155 of the Code deals with the act of "*infringement of secret correspondence, telephone conversations, mail, telegraph, or other messages*" and provides for a fine in the amount of 1,000 to 2,000 manats, or corrective work for the term of up to two years.

According to Article 156, entitled "*Infringement of inviolability of the private life*", the violation of the rights enshrined in the relevant article of the Constitution is punishable by a fine in the amount of 1,000 to 2,000 manats, or community service for the term of up to 240 to 480 hours, or corrective work for the term of up to one year. If the same action is committed by the official with the use of the official position, it is punishable by the restriction of liberty for the term of up to two years, or imprisonment for the term of up to two years, with or without deprivation of the right to hold the certain position or to engage in the certain activities for the term of up to three years.

Article 157 of the CrC deals with "*inviolability of home*". This article criminalizes trespassing against the will of persons, except in cases prescribed by law, and envisages the commission of the same act by an official with the use of the official position, including with the use of force or threat of use of force, as an aggravating circumstance and imposes a more severe sanction.

⁶ Criminal Code of the Republic of Azerbaijan, <https://e-qanun.az/framework/46947>

Article 158 (*Infringement of inviolability of the premises (rooms) of legal entities*) provides for the violation of the same act in relation to legal entities.

The offenses under Articles 271-273 of the CrC are considered cyber crimes and these articles provide for criminal liability for illegal access to computer systems and illegal seizure of personal information.

Although the imposition of criminal liability on the inviolability of private and family life, home, and correspondence, and the imposition of various penalties for violating these rights suggest that the state has fulfilled its positive obligation to some extent, the sanction of punishment provided by law for interference with these rights (corrective work, restriction of liberty for officials for the term of up to two years or imprisonment for the same period) is not adequate. If we look at the sanction of acts, we see that the legislator classifies these acts as crimes that do not pose a great threat to society. However, this approach of the legislator is wrong. So, for threats to and interference with a person's life, identity, and moral integrity, more serious measures and severe sanctions should be imposed, and these acts should at least be classified as "less serious crimes". In this way, individuals may be more wary of potential crimes. Because a person's private life, family, and home are his most intimate possessions. Illegal interference with this right and the inability to protect one's private life can create a person's distrust of the state. If a person thinks that the right he/she considers the most important is not adequately protected by the state, he/she may think that his/her other rights are also protected like that (i.e. not protected), and in this case, he/she may refuse to perform his/her duties and obligations and be negligent. Furthermore, interference with private life can sometimes result in more serious cases (suicide of the victim, etc.). To prevent this, the state must reconsider the importance of the rights regarding private life. Because this right is protected at the level of the Convention and is one of the fundamental human rights. These rights, protected at the CrC level, are very important, and interference with these rights should be considered a less serious crime, not a crime that does not pose a major public threat, and sanctions (2-7 years) provided by law for less serious crimes should be applied to these acts.

Code of Criminal Procedure⁷

The CPM reiterates the importance of the rights and freedoms enshrined in the Convention. So, Articles 16 and 17 of the Code deal with the protection of the right to private life and home. These articles state that during criminal proceedings, the right to private life (one's own or family's), and the confidentiality of information sent via correspondence, telephone conversations and other means of communication, and of other information, cannot be interfered with illegally, and except in the circumstances provided for in this Code, nobody may enter a

⁷ Criminal Procedure Code, <https://e-qanun.az/framework/46950>

dwelling without the consent of those living there. These cases are considered legal intervention only if they are carried out by a court decision.

According to Article 199 of the Code, entitled "*The preservation of personal and family secrets*", during criminal proceedings, measures shall be taken under this Code and other laws of the Republic of Azerbaijan to protect information which constitutes personal and family secrets. In the course of procedural activities, it shall be prohibited to unnecessarily collect, disseminate, or use information relating to the private life of any person and other information of a personal nature which is intended to be kept secret.

The importance of private life is reaffirmed by the fact that, in accordance with Article 199.4, evidence which discloses personal or family secrets shall be examined in a closed court session. Compensation for damage caused to any person as a result of an infringement of the inviolability of private life or the dissemination of personal or family secrets shall be paid in accordance with the AR legislation.

According to Article 455 of the CCrP, one of the grounds for reconsideration of a case related to new circumstances of violation of rights and freedoms is the determination by the European Court of Human Rights of violation of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms by the courts of the Republic of Azerbaijan, simplified pre-trial proceedings, or court proceedings in the form of private charges, when considering the case.

According to Article 459, in the case provided for in Article 455, the Plenum of the Supreme Court of the Republic of Azerbaijan, which has reconsidered the judicial act, has the right to make one of the following decisions:

- 1) on sending the judicial act to the relevant court of first or appellate instance for full or partial annulment of judicial acts issued in violation of rights and freedoms in the relevant court of first, appellate, and cassation instance, as well as in the additional cassation procedure, and for reconsideration of a criminal case, simplified pre-trial proceedings, or the materials of the complaint in the form of private charges;
- 2) on changing the decision of the court of cassation instance and (or) the decision made in the additional cassation procedure;
- 3) on annulment of the decision of the court of cassation instance and (or) the decision made in the additional cassation procedure and issuance of a new decision.

Code of Civil Procedure⁸

A number of articles of the CCiP provide for closed court proceedings in order to prevent the disclosure of private and family life secrets and personal correspondence. So, according to Article 10.2, all courts shall hear cases in open hearings, except for instances of disclosure of state, professional and commercial secret, dissemination of personal and family secrets, pursuing interests of minors.

Article 10.4 of the Code stipulates that person participating in case shall be entitled to request court to hold close session for the purposes of protection of secrecy of adoption, inheritance, commerce, invention or taxation, as well as other legally protected secrets and intimate aspects of his personal and family life.

According to Article 10.10 of the CCiP, personal correspondence and personal telegraphic information shall be revealed in course of open court session only upon consent of recipient of such correspondence and information. Said provisions shall also apply to voice and video recording of a private nature.

Article 200 of the Code states that for the purpose of maintaining secrecy of personal correspondence, such correspondence shall be disclosed and examined by court in an open session only upon consent of the recipients of these correspondences. In the absence of such consent, the hearings in which the evidence is disclosed and examined shall be held in closed session.

According to Article 203.1 of the CCiP, rules stipulated by Article 200 of this Code shall apply to playing, as well as examination of audio and video recordings of personal nature.

According to Article 431-1 of the Code, one of the grounds for reconsideration of a case related to new circumstances of violation of rights and freedoms is the determination by the European Court of Human Rights of violation of the provisions of the Convention on the Protection of Human Rights and Fundamental Freedoms by the courts of the Republic of Azerbaijan when considering the case.

According to Article 431-2, the plenum of the Supreme Court of the Republic of Azerbaijan considers legally enforced court cases on new circumstances related to violation of rights and freedoms. Plenum deals only with legal issues related to the execution of decisions of the Constitutional Court of the Republic of Azerbaijan and the European Court of Human Rights.

Paragraph 1 of Article 431-3, entitled “Procedure for reconsideration of court acts on new circumstances related to violation of rights and freedoms”, states that plenum considers court acts on new circumstances related to violation of rights and freedoms at the court hearing no later

⁸ Civil Procedure Code, <https://e-qanun.az/framework/46945>

than three months after the decision of the Constitutional Court of the Republic of Azerbaijan or the European Court of Human Rights entered the Supreme Court of the Republic of Azerbaijan.

Civil Code⁹

Article 6.1.6 of the Code designates the inadmissibility of unauthorized interference into a person's private and family life as one of the principles of civil law.

According to Article 23.1, a natural person is entitled in a court order to require to disclaim a judicial declaration as untrue information, which discredits his honor, dignity or business reputation, discloses a secret of his private and family life or his personal or family immunity, provided that the person who disseminated such information fails to prove that such information was true.

Article 23.2 of the CiC states that if information harming the honor, dignity or business reputation or disclosing a secret of private and family life of a natural person was disseminated in the mass media, the information shall be declared as untrue in the same mass media. If such information is contained in an official document, such document shall be amended and interested persons shall be notified of such amendment. In other cases, the declaration procedure shall be determined by a court.

According to Article 1097.1, any harm caused to a person or property of a private person, as well as harm caused to the property and business reputation of a legal entity, in result of a civil rights violation (delict), shall be subject to complete compensation by the person, causing such harm.

Law on Detective-Search Activity¹⁰

Paragraph 1 of Article 4, entitled "*Guarantees for human and civil rights and freedoms*", states that it is prohibited to disseminate information obtained without the consent of a person on the inviolability of his/her private life, including the secrecy of his/her private and family life, as well as his/her honor and dignity. So, it follows that with the exception of cases envisaged in law, including prevention of crimes, detection of committed crimes, identification of persons, search of persons concealing themselves from court, investigation, and inquiry authority, and evading from execution of punishment, as well as missing persons, that are carried out on the basis of a court decision, even persons and bodies engaged in detective-search activities may not violate this right of a person. The CrC established criminal liability for violation of this norm. So, according to Article 302 of the Code, violation of the legislation on detective-search

⁹ <https://e-qanun.az/framework/46944>

¹⁰ Law on Detective-Search Activity, <http://www.e-qanun.az/framework/2938>

activities is a criminal act, and the person who committed the crime in question is subject to the sanctions provided for in the article.

Article 10 of the law deals with detective-search measures. According to this article, subjects of detective-search activity may take all measures specified in this Article, including tapping telephone conversations, examination of postal, telegraphic, and other correspondence, entering and inspecting buildings, including dwelling premises, as well as other closed buildings, constructions sites, and land plots, monitoring buildings, including dwelling premises, as well as other closed buildings, constructions, land plots, and transportation means, only after a court decision has entered into force. However, according to Part 4 of the article, subjects of detective-search activity can tap telephone conversations, examine postal, telegraphic, and other mail correspondence, retrieve information from technical channels and other technical means, as well as shadow people for the purpose of prevention of grave crimes against individual or especially dangerous crime against the State. Furthermore, they can examine buildings, including dwelling premises, as well as, other closed buildings, constructions, and land plots for the purpose of detention of those who prepare, commit, and have committed a crime, escaped from detention facilities and conceals himself/herself, as well as, prevention of fire, explosions, and encroachments against public order, or posing potential risk of danger to public order. This means that, except in these cases, the application of special measures against individuals without a court decision is illegal and leads to a violation of their rights.

Moreover, the Law of the AR on Personal Data and the Law of the AR on Biometric Information emphasize that this information is personal information of people and identifies them, and the importance of this information was emphasized; at the same time, the transfer of such information to third parties without their consent and permission is prohibited.

In general, each of the above-mentioned normative legal acts states the importance of information related to individuals, their physical and moral integrity, existence, rights in relation to them and protection of these rights, and prohibits the interference of state bodies and other persons in these rights.

However, the right provided for in Article 8 of the Convention is a relative right, not an absolute one. That is, this right can be interfered with only in cases and within the limits provided by law and only by the state. But there must be a serious basis for intervention. One of these grounds is a court decision. For example, according to Article 243 of the CCrP, the search or seizure is, as a rule, carried out on the basis of a court decision. That is, without such a decision, no one, not even the persons conducting the detective-search activity, may enter or search the building, car, and other apartment provided for in Article 8 against the will of the people.

A similar provision is provided for in the Law of the AR on Police¹¹. So, according to Article 24 of this law, police officer shall be entitled to restrict the right of privacy of individual's dwelling premises and to access individual residential premises against the will of residents only in the manner and in the cases prescribed by law (subject to the warrant issued by judge, in the course of implementation of urgent measures with a view to guarantee rights and freedoms of other persons, to protect public order and preserve public safety, and to prevent and eliminate consequences of grave criminal offenses, natural disasters, accidents, epidemics, and epizootics). Even if the police have permission to enter the place of residence, prior to entering the place of residence, he/she must inform the other person living or temporarily staying there of the grounds for entering the place of residence.

5.2. International legislation:

Private life and family life and their protection are a matter of not only local but also international importance. It is no coincidence that many international legal documents, conventions, and declarations, whether ratified by Azerbaijan or not, have touched upon this human right in one form or another, its importance, and the inadmissibility of interference with this right. Examples of such acts are the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Freedoms (European Convention on Human Rights), the Covenant on Civil and Political Rights, the Convention on the Rights of Persons with Disabilities, and others.

Note: The inviolability of private and family life is reflected in many legal documents and conventions in international law. However, in this report, we consider it expedient to examine only the conventions ratified by Azerbaijan.

Universal Declaration of Human Rights¹²

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

Article 12 of the Declaration states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

¹¹ Law on Police, <https://e-ganun.az/framework/2937>

¹² Universal Declaration of Human Rights, <https://www.coe.int/az/web/compass/the-universal-declaration-of-human-rights-full-version->

European Convention on Human Rights¹³

This Convention was adopted in 1950 on the basis of the Universal Declaration of Human Rights and entered into force in 1953. The Republic of Azerbaijan ratified this Convention on December 25, 2001, with the Law¹⁴ of the AR on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 1, 4, 6, and 7.

Article 8 of the Convention is entitled "Right to respect for private and family life". Paragraph 1 of this article guarantees this right and states that everyone has the right to respect for his private and family life, his home, and his correspondence.

As mentioned earlier, certain interference with the right enshrined in Article 8 is allowed. That is, in cases prescribed by law, this right may be restricted by the state. Paragraph 2 of the same article lists the cases in which this right may be interfered with. According to that paragraph, *there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*. Therefore, these grounds are cases in which the restriction of a person's right protected by Article 8 is allowed.

Article 46 of the ECHR deals with the binding force and enforcement of judgments of the European Court of Human Rights. So, under the Convention, the High Contracting Parties undertake to comply with the final decision of the Court in any case in which they are parties. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

Covenant on Civil and Political Rights¹⁵

This Covenant, adopted by the General Assembly of the United Nations on December 16, 1966, ratified by Azerbaijan on August 13, 1992, and entered into force on November 13, 1992, is one of the most important legal documents related to the protection of first-generation human rights and freedoms. Article 17 of the Covenant deals with the right to respect for private and family

¹³ European Convention on Human Rights, <https://www.coe.int/az/web/compass/the-european-convention-on-human-rights-and-its-protocols>

¹⁴ Law of the AR on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 1, 4, 6, and 7, <https://e-qanun.az/framework/1405>

¹⁵ Covenant on Civil and Political Rights, https://migration.gov.az/content/pdf/5acb034968016_M%C3%BCIki%20v%C9%99%20siyasi%20h%C3%BCquqlar%20haqq%C4%B1nda%20Pakt.pdf

life. Article 17.1 states that *no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence, nor to unlawful attacks on his honour and reputation.*

Paragraph 2 emphasizes that everyone has the right to the protection of the law against such interference or attacks.

Convention on the Rights of Persons with Disabilities¹⁶

The Republic of Azerbaijan acceded to the Convention on the Rights of Persons with Disabilities, adopted by the General Assembly of the United Nations on December 13, 2006, by the Law¹⁷ dated October 2, 2008. The Convention entered into force on November 15, 2008. The Convention addresses a number of rights of persons with disabilities, as well as their rights to private and family life. According to Article 22, entitled "Respect for privacy", no person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

¹⁶ Convention on the Rights of Persons with Disabilities, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>

¹⁷ Law of the AR on Accession to the Convention on the Rights of Persons with Disabilities, <https://e-ganun.az/framework/15641>

6. General information on ECtHR judgments against Azerbaijan under Article 8

The Republic of Azerbaijan acceded to the Convention and its Protocols by a law adopted on December 25, 2001. On April 15, 2002, the ECtHR began considering complaints from Azerbaijan. Since that date, the Court has made 258 judgments regarding Azerbaijan. 16 of them are directly related to Article 8. These judgments can be grouped according to their nature into the following categories.

Note: This chapter describes the Court's judgments in chronological order.

6.1. Judgments on the inviolability of home:

The ECtHR adopted the following three judgments on the inviolability of home:

1. In the case of **Minas Sargsyan v Azerbaijan** (*application No. 40167/06; date: 16.06.2015*)¹⁸, the ECtHR noted that although the exercise of Article 8 rights, including private and family life, pertains predominantly to relationships between living human beings, it is not excluded that these notions may extend to certain situations after death. The Court has found that the authorities' refusal to return the bodies of the applicant's relatives and the order of their burial in an unknown location, thus depriving the applicants of the opportunity to know the location of the gravesite and to visit it subsequently, constituted an interference with their private and family life. The ECtHR has found it established that the impossibility for the applicant to have access to his property in Gulistan and the Government not taking any alternative measures to restore his property rights or to provide him with compensation for his loss of their enjoyment, had placed and continued to place an excessive burden on him. The Court concluded that there has been a continuing breach of the applicant's rights under Article 8 of the Convention.
2. In the case of **Nuriya Khalikova v. Azerbaijan** (*application No: 42883/11; date: 14.03.2016*)¹⁹, the ECtHR recognized the violation of Article 8 and noted that the police intervention of November 19, 2010, which resulted in the applicant's eviction from her flat, constituted an interference by a public authority with her right to respect for her home. The Court added that there was no legal basis for the police intervention of November 19, 2010, and that the applicant's forced eviction from her flat was not based on a court decision or any other legal precept. In this connection, the Court considered it necessary to emphasise that the practice of forcibly evicting an individual from his or her home by the police force

¹⁸ Minas Sargsyan v Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-155662>

¹⁹ Nuriya Khalikova v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-157964>

without any legal basis was not compatible with the rule of law in a democratic society respecting the fundamental rights and freedoms guaranteed under the Convention.

3. In the case of **Sayyara Ahmadova v. Azerbaijan** (*application No. 9437/12; date: 18.11.2021*)²⁰, the ECtHR stated that under the Court's well-established case-law, since the loss of one's home is the most extreme form of interference with the right to respect for the home, any person at risk in this regard – whether or not the person belongs to a vulnerable group – should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention. However, in this case, the applicant was evicted and not afforded a procedure considering her personal circumstances; thus, the right to respect for private life was violated.

6.2. Judgments on advocates:

The three judgments from this category are as follows:

1. In the case of **Intigam Aliyev v. Azerbaijan** (*application No: 68762/14 and 71200/14; date: 20.09.2018*)²¹, the ECtHR recognized a violation of Articles 5 and 8 of the Convention. Based on its case-law regarding Article 8, the Court noted that the search of a lawyer's office, including documents and electronic data, amounted to an interference with his "private life", "home", and "correspondence". Accordingly, the search and seizure both in the home and office of the applicant constituted an interference with his rights under Article 8 of the Convention. The Court has repeatedly held that persecution and harassment of members of the legal profession strikes at the very heart of the Convention system. Therefore the searching of lawyers' premises should be subject to especially strict scrutiny. In this case, since the search and seizure at the applicant's home and office did not pursue any of the legitimate aims, the ECtHR recognized a violation of the right to respect for private life.
2. In the case of **Elchin Namazov v. Azerbaijan** (*application No: 74354/13; date: 30.01.2020*)²², the Court found that an interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and, in particular, if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient". It also emphasized that the specific status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts. That special role of lawyers, as independent professionals, in the administration of justice entails a number of duties, particularly with

²⁰ Sayyara Ahmadova v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-213223>

²¹ Intigam Aliyev v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-186126>

²² Elchin Namazov v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-200444>

regard to their conduct. Whilst they are subject to restrictions on their professional conduct, which must be discreet, honest and dignified, they also enjoy exclusive rights and privileges that may vary from one jurisdiction to another – among them, usually, a certain latitude regarding arguments used in court. Furthermore, professional associations of lawyers play a fundamental role in ensuring the protection of human rights and must therefore be able to act independently, and respect towards professional colleagues and self-regulation of the legal profession are paramount. Taking all this into account, the ECtHR concluded that it did not consider the applicant’s disbarment necessary in a democratic society as a form of sanction, and therefore recognized a violation of Article 8 in this judgment.

3. In the case of **Khalid Bagirov v. Azerbaijan** (*application No: 81024/12 and 28198/15; date: 25.06.2020*)²³, the ECtHR noted that an interference envisaged in the Convention would be considered “necessary in a democratic society” for a legitimate aim if it answered a “pressing social need” and, in particular, if it was proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it were “relevant and sufficient”. According to the Court, in the court proceedings relating to the applicant’s disbarment, the domestic courts failed to sufficiently assess the proportionality of the interference, keeping in mind that the disbarment sanction constituted the harshest disciplinary sanction in the legal profession, having irreversible consequences on the professional life of a lawyer. The Court concluded that the reasons given by the domestic courts in support of the applicant’s disbarment were not relevant and sufficient, and that the sanction imposed on the applicant was disproportionate to the legitimate aim pursued. Furthermore, referring directly to the case of *Intigam Aliyev v. Azerbaijan*, the ECtHR observed that in a series of cases, it had noted a pattern of arbitrary arrest, detention, or other measures taken in respect of government critics, civil society activists, and human rights defenders. Against this background, the Court underlined that, notwithstanding the duties, in particular, with respect to their conduct, with which all lawyers must comply, the alleged need in a democratic society for a sanction of disbarment of a lawyer in circumstances such as this would need to be supported by particularly weighty reasons, and recognized a violation of Article 8 of the Convention on account of the applicant’s disbarment.

6.3. Judgments on search and seizure:

The two judgments from this category are as follows:

²³ Khalid Bagirov v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-203166>

1. In the case of **Leyla Yunusova and Arif Yunusov v. Azerbaijan** (*application No: 68817/14; date: 16.06.2020*)²⁴, the ECtHR found that the inspection of the applicants' luggage and handbags, regardless of its classification under domestic law, as well as the searches of their home and the Association's offices and seizure of various materials constituted an interference with the applicants' "private life", "home", and "correspondence" within the meaning of Article 8 § 1 of the Convention. Referring to the case of *Intigam Aliyev v. Azerbaijan*, the Court reiterated that the exceptions to the individual's right to respect for his or her private and family life, his or her home and his or her correspondence listed in Article 8 § 2 must be narrowly interpreted. According to the Court, the enumeration of the exceptions as listed in Article 8 § 2 is exhaustive and their definition is restrictive. Therefore, the interference must meet the three-stage test principle ("in accordance with the law", "legitimate aim", and "necessary in a democratic society"). The ECtHR found that, in the particular circumstances of the present case, the search and seizure at the applicants' home and the Association's offices as well as the inspection of the applicants' luggage and handbags at the airport and seizure of various objects and documents, including the applicants' passports, did not pursue any of the legitimate aims enumerated in Article 8 § 2. Thus, the Court recognized a violation of Article 8 of the Convention.
2. In the case of **Avaz Zeynalov v. Azerbaijan** (*application No: 37816/12 and 25260/14; date: 22.04.2021*)²⁵, the ECtHR noted that with regard to searches of premises and seizures, the Court had consistently held that the Contracting States may consider it necessary to resort to such measures in order to obtain physical evidence of certain offences and that the Court would assess whether the reasons adduced to justify such measures were "relevant" and "sufficient" and whether the aforementioned proportionality principle was adhered to. The Court reiterated that, according to its case-law, search orders have to be drafted, as far as practicable, in a manner calculated to keep their impact within reasonable bounds. The Court observed that the order's breadth and vagueness were also reflected in the way in which it was executed. The investigator seized numerous items and documents which were not clearly related to the investigation in respect of which the searches and seizures were conducted. The ECtHR considered that the above-mentioned shortcomings were aggravated by the domestic authorities' failure to take any steps to guarantee the presence of the applicant and his lawyer during the searches and seizures as provided under Azerbaijani law and recognized a violation of Article 8 of the Convention.

²⁴ Leyla Yunusova and Arif Yunusov v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-203562>

²⁵ Avaz Zeynalov v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-209346>

6.4. Judgments on interference with correspondence and telephone

conversations:

The ECtHR has made two judgments regarding interference in correspondence and telephone conversations. These are:

1. In the case of **Rauf Mirgadirov v. Azerbaijan and Turkey** (*application No: 62775/14; date: 17.09.2020*)²⁶, as is well established in the Court's case-law, upon being imprisoned, a person forfeits the right to liberty, but continues to enjoy all other fundamental rights and freedoms, including the right to respect for family life. Therefore, the ECtHR noted that any restriction on those rights must be justified in each individual case. In the relevant judgment, the Court observed that the ban imposed by the investigator on the applicant having any contact (meetings, telephone calls, or correspondence) with the outside world (including his family members), except for contact with his lawyers, and on his right to receive and subscribe to newspapers and magazines was not justified and was not necessary in a democratic society. So, the Court recognized a violation of Article 8 of the Convention.
2. In the case of **Azer Ahmadov v. Azerbaijan** (*application No. 3409/10; date: 22.07.2021*)²⁷, recognizing the violation of Article 8, the Court noted that as secret surveillance is a serious interference with a person's right to respect for private life, the judicial authorisation serving as the basis for such surveillance cannot be drafted in such vague terms as to leave room for speculation and assumptions with regard to its content and, most importantly, with regard to the person in respect of whom the measure is being applied. The court decision must be substantiated and the state authorities must not go beyond this decision.

6.5. Judgments on parent-child communication:

The following two judgments have been made regarding parent-child communication:

1. In the case of **Laman Babayeva v. Azerbaijan** (*application No: 57724/11; date: 30.01.2020*)²⁸, recognizing the violation of Article 8, the Court stated that Article 8 requires that the domestic authorities should strike a fair balance between the interests of the child and those of the parents, and that, in the balancing process, particular importance should be attached to the best interests of the child, which, depending on their nature and seriousness, may override those of the parents. According to the ECtHR, family life in this sense, and especially the rights of parents to exercise parental authority over their children, having due

²⁶ Rauf Mirgadirov v. Azerbaijan and Turkey, <https://hudoc.echr.coe.int/eng?i=001-204584>

²⁷ Azer Ahmadov v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-211101>

²⁸ Laman Babayeva v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-200440>

regard to their corresponding parental responsibilities, is recognized and protected by the Convention, in particular by Article 8. Domestic measures hindering enjoyment of family life such as a decision granting a residence order in respect of children to a parent constitutes an interference with the right to respect for family life. Any such interference constitutes a violation of this Article unless it is “in accordance with the law”, pursues an aim or aims that are legitimate under Article 8 § 2 and can be regarded as “necessary in a democratic society”. Necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued.

2. In the case of **Rasim Abushov v. Azerbaijan** (*application No: 76251/11; date: 27.02.2020*)²⁹, the Court noted that it is common ground that the tie between the applicant and his children falls within the scope of “family life” within the meaning of Article 8 of the Convention. However, the object and purpose of the Convention, which is an instrument for the protection of human rights, requires its provisions to be interpreted and applied in such a way as to make their stipulations not theoretical or illusory but practical and effective. Recognizing the violation of Article 8, the Court noted that the fact that the applicant could not see his children enough was an interference with his right to private and family life.

The Court accepted that the issue of **citizenship** and **reputation** was also covered by Article 8, and, respectively, made judgments in the cases of *Eldar Ahmadov v. Azerbaijan* (on citizenship) and *Khadija Ismayilova v. Azerbaijan* (on reputation).

In the case of **Eldar Ahmadov v. Azerbaijan** (*application No: 32538/10; date: 30.01.2020*)³⁰, the Court noted that although the right to citizenship is not as such guaranteed by the Convention or its Protocols, it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual. The Court also considered that the same principles must apply to the revocation of citizenship already obtained, since this might lead to a similar interference with the individual’s right to respect for family and private life. In these circumstances, the Court could not but conclude that the denial of Azerbaijani citizenship to the applicant was not accompanied by the necessary procedural safeguards and must be considered as arbitrary. So, it recognized a violation of Article 8 of the Convention.

In the case of **Khadija Ismayilova v. Azerbaijan** (*application No: 65286/13 and 57270/14; date: 10.01.2019*)³¹, the Court noted that for an investigation to be regarded as “effective”, it should, in principle, be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means; in other words, even if no result is obtained, all possible means must be used to obtain it.

²⁹ Rasim Abushov v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-201338>

³⁰ Eldar Ahmadov v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-200437>

³¹ Khadija Ismayilova v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-188993>

In examining the effectiveness of criminal investigations in the context of the positive obligations under, *inter alia*, Article 8 of the Convention in cases analogous to the present case, the Court has previously used the “significant flaw” test. The ECtHR’s task under that test is to determine whether the alleged shortcomings in the investigation had such significant flaws as to amount to a breach of the respondent State’s positive obligations under Article 8 of the Convention.

In the case of **Khadija Ismayilova v. Azerbaijan (№ 3)** (*application No: 35283/14; date: 07.05.2020*)³², recognizing the violation of Article 8, the Court stated that even where a person is known to the general public, he or she may rely on a “legitimate expectation” of protection and respect for his or her private life. Thus, the fact that an individual belongs to the category of public figures cannot in any way, even in the case of persons exercising official functions, legitimize intrusions into private life.

Another and currently last ECtHR judgment recognizing the violation of Article 8 against Azerbaijan is the case of **Hashemi v. Azerbaijan** (*application No: 1480/16; date: 13.04.2022*)³³. In this case, the Court noted that although the right to citizenship is not as such guaranteed by the Convention or its Protocols, since this issue is directly related to the identification of a person and his identity, it is an illegal interference with the right to citizenship, and deprivation of this right is a violation of the right to respect for private life. According to the ECtHR, one of the main criteria for the existence of an interference with Article 8 is that the refusal of the competent authorities to issue an identity card can lead to significant negative consequences in a person's daily life.

As is clear from the brief description of the judgments, the Court recognized a violation of Article 8 in each of these judgments against Azerbaijan regarding the right to respect for private life and imposed an obligation on the government to pay the applicants the appropriate amount of compensation. Thus, the level of execution of judgments, in general, will be examined in the next chapter.

³² Khadija Ismayilova v. Azerbaijan (№ 3), <https://hudoc.echr.coe.int/eng?i=001-202423>

³³ Hashemi v. Azerbaijan, <https://hudoc.echr.coe.int/eng?i=001-215076>

7. Status of execution of judgments against Azerbaijan under Article 8 and existing problems

The previous chapter gave a brief description of the ECtHR judgments against Azerbaijan under Article 8. However, in addition to the judgments made by the Court under this article, it is important to consider the extent to which these judgments have been executed by the government and the extent to which individual and general measures have been taken. It should be noted that individual measures mean measures to be taken in relation to the applicant in connection with a specific case, and general measures mean measures related to the general problems and gaps in the legislation and practice of the country in terms of the relevant violation of Article 8 and their elimination. In this chapter, we will touch on these issues and analyze the status of the execution of judgments.

Note: This chapter describes the Court's judgments in chronological order.

In the case of *Minas Sargsyan v. Azerbaijan*, which is included in the category of the inviolability of home, the applicant requested first and foremost restitution of his property, including the right to return to his property and home in Gulistan. Furthermore, claimed compensation for pecuniary damage in a total amount of 374,814 euros, non-pecuniary damage in a total amount of 190,000 euros, and reimbursement of the costs and expenses incurred in the proceedings before the Court.

The ECtHR, which recognized a violation of Article 8 in its judgment by fifteen votes to two, along with a violation of Article 1 of Protocol No. 1 (Protection of property) and Article 13 (Right to an effective remedy), ruled that the government was not ready to address the application of Article 41 (Just satisfaction); therefore, it reserved the said question in whole, invited the Government and the applicant to submit, within twelve months from the date of notification of this judgment, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach, and reserved the further procedure and delegated to the President of the Grand Chamber the power to fix the same if need be.

Article 41 of the Convention states, “If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

The Court’s judgment on the case of *Minas Sargsyan v. Azerbaijan* was made on 16.06.2015. On 06.03.2020, the Government of Azerbaijan submitted an Action Plan³⁴ to the Committee of Ministers of the Council of Europe, which includes individual and general measures related to

³⁴ Action Plan of the Government of Azerbaijan in connection with the case of *Minas Sargsyan v. Azerbaijan*, [https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:\[%22DH-DD\(2017\)265E%22}](https://hudoc.exec.coe.int/ENG#{%22EXEIdentifier%22:[%22DH-DD(2017)265E%22})

the judgment. The Action Plan envisaged the establishment of the Working Group on evaluation of loss and damages suffered as a result of occupation of the territories of the Republic of Azerbaijan by the Armed Forces of Armenia by the Resolution of the Cabinet of Ministers No. 51 of 26.02.2014. This group, consisting of independent experts in the fields of economics and real estate, evaluated the amount of compensation for pecuniary and non-pecuniary damage suffered by the applicant, and the Azerbaijani Government's submissions to the Court were based on these evaluations.

The Government was still on the position that the main responsibility in this case belonged to the Republic of Armenia, because, although the Government of Azerbaijan has jurisdiction as the territorial state and full responsibility under the Convention, it may encounter difficulties at a practical level in exercising their authority in these territories. Armenian armed forces repeatedly violated the ceasefire, especially in April 2016, not only in this village but also in several villages of Goranboy district, including Tap Garagoyunlu. As a result, six civilians were killed, 33 people were wounded, dozens of civilian objects were destroyed, and hundreds of livestock, head of cattle and small cattle perished.

In connection with the general measures, it was noted that Azerbaijan fought fire with fire and silenced the opposite side, and after taking back several heights, including Jojug Marjanli village, carried out restoration work there. The Azerbaijan National Agency for Mine Action (ANAMA) has continued clearance operation in the region and has undertaken all measures necessary to secure safe return of individuals to their homes. The government's policy aimed at ensuring the security of people living in those areas and the territory as a whole continues.

In response to the Action Plan submitted by the Government of Azerbaijan, the Armenian side expressed its position³⁵ on the status of execution on 08.03.2017. The Armenian government, which did not accept the claim that it was responsible for the case via communication, said that the activities of the Working Group could not be so simple and accessible, that it would not be possible to conduct an accurate assessment, and that a new Action Plan should be developed.

As for the applicant's submission on the status of execution, the applicant's representative, the European Human Rights Advocacy Centre (EHRAC), located in London, in its latest communication³⁶ dated 29.04.2021, stated that although the Government of Azerbaijan had to pay a total of 35,000 euros in compensation for pecuniary and non-pecuniary damage to the applicant so far, no amount has been paid by that date.

Finally, regarding the status of execution of the case, it should be noted that the overall process and evaluation of the Committee of Ministers of the Council of Europe has not yet been

³⁵ Communication from the Government of Armenia dated 08.03.2017, [https://hudoc.exec.coe.int/ENG#%7B%22EXEClidentifier%22:%5B%22DH-DD\(2017\)277E%22%7D](https://hudoc.exec.coe.int/ENG#%7B%22EXEClidentifier%22:%5B%22DH-DD(2017)277E%22%7D)

³⁶ Communication of EHRAC dated 29.04.2022, [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2021\)450E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2021)450E)

completed, and the Committee postponed the process at its 1428th meeting³⁷ to September 2022 - the 1443rd meeting.

Another judgment related to the inviolability of home - the case of Khalikova against Azerbaijan, adopted on 22.10.2015 and recognized by the ECtHR as a violation of Article 5, Article 8, and Protocol No. 1 to the Convention, is being considered as part of the Akhverdiyev group of cases³⁸. Although the government provided communication on the group of cases, no steps have been taken so far, except for the payment of compensation (total of 62,500 euros including all costs and expenses) to the applicant as determined by the ECtHR in connection with the execution of the case of Khalikova v. Azerbaijan and the restoration of her violated right to home, no individual or general measures have been taken, and no documents have been sent to the Committee of Ministers.

The next and currently last judgment on the right to inviolability of home is related to the case of Sayyara Ahmadova. The final hearing of this case was held on 18.02.2022. The work is currently under execution, the execution period has not expired, and the government has not taken any individual or general measures.

The final judgment in the case of Aliyev v. Azerbaijan, the first judgment of the subgroup of judgments related to the professional activity of advocates, was made on 20.09.2018, and the last court hearing was held on 04.02.2019. The ECtHR, which recognized a violation of Articles 3 (Prohibition of torture), 5.1 and 5.4 (Right to liberty and security), 8 (Right to respect for private and family life), and 18 (Limitation on use of restrictions on rights) in its judgment, held that the Government of Azerbaijan was to pay the applicant, within three months, 20,000 euros in respect of non-pecuniary damage, 6,150 euros in respect of costs and expenses, plus any tax that may be chargeable to the applicant.

In the Action Plan³⁹ submitted by the Government at the 1335th meeting in September 2019, the activities included in this group, including a number of individual and general measures in the case of Intigam Aliyev v. Azerbaijan, were included in the Mammadov group of cases. So, as an individual measure in the case of Aliyev v. Azerbaijan, it was noted that according to the Plenum decision of the Supreme Court dated 28.08.2016, the applicant's sentence of seven years and six months' imprisonment was reduced to five years' imprisonment suspended on probation under Article 70 of the CrC. By the decision of the plenum, I. Aliyev was immediately released from detention. The Action Plan also stated that the freeze of the applicant's bank accounts had also been revoked. Finally, on 29.04.2020, the amount of compensation to be paid to the applicant was paid in full.

³⁷ [https://hudoc.exec.coe.int/ENG?i=CM/Del/Dec\(2022\)1428/H46-5E](https://hudoc.exec.coe.int/ENG?i=CM/Del/Dec(2022)1428/H46-5E)

³⁸ Akhverdiyev group of cases, <https://hudoc.exec.coe.int/ENG?i=004-1665>

³⁹ Action Plan submitted by the Government at the 1335th meeting on the Mammadov group of cases, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2019\)1033E](https://hudoc.exec.coe.int/eng?i=DH-DD(2019)1033E)

The general activities in the Plan were not divided separately for each case in the group, were generally described, and did not include specific activities related to Article 8.

The applicant submitted several submissions to the Committee on the status of execution of the case. In a communication submitted at the 1436th meeting in May 2022, the applicant stated that his conviction had not yet been overturned, despite the decision of the Plenum of the Supreme Court on his case, and asked the Committee to order the government to reconsider his case at the Plenum of the Supreme Court.

In its last decision⁴⁰, No. 1428, dated March 2022, the Committee noted with regret that no information has been provided by the authorities as to the individual measures taken since the Committee's last examination (November 30 - December 2, 2021). Furthermore, the Committee reiterated its call on the authorities to take all steps within their powers to ensure that the convictions of the remaining nine applicants in this group of cases (including Intigam Aliyev) are quashed without further delay;

As can be seen, only the damage inflicted on the applicant in the case in question was compensated but his conviction was not overturned. The cases of Ilgar Mammadov, Rasul Jafarov, and four former activists of the Nida Civil Movement on the Mammadov group of cases were considered in the Plenum of the Supreme Court. Although they were acquitted and compensated for non-pecuniary damage, other cases in the group, including Aliyev's case, have not yet been considered and no final hearing has been held.

The next case related to the activities of advocates is the case of Elchin Namazov v. Azerbaijan. This case is also considered in the form of a group of cases. This group includes the cases of Elchin Namazov v. Azerbaijan, Aslan Ismayilov v. Azerbaijan, and Khalid Bagirov v. Azerbaijan.

The last meeting of the Committee on this group was held on September 14-16, 2021. At the 1411th meeting⁴¹, the Committee noted with concern the delay in providing information by the authorities as regards the individual and general measures taken or envisaged. Moreover, as regards the individual measures, the Committee invited the authorities to ensure that the proceedings against the applicants are re-opened with a view to rectifying the shortcomings identified by the Court. The Committee, which invited the authorities to draw the Azerbaijani Bar Association's attention to the Court's findings in light of the obligation to ensure restitutio in integrum for the applicants, called on the authorities to improve disciplinary proceedings against lawyers and the rules for exclusion from the Bar Association.

⁴⁰ Decision of the Committee of Ministers No. 1428, dated March 2022,
[https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2022\)1428/H46-4E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2022)1428/H46-4E)

⁴¹ 1411th meeting of the Committee of Ministers on the Namazov group of cases,
[https://hudoc.exec.coe.int/eng?i=CM/Del/Dec\(2021\)1411/H46-4E](https://hudoc.exec.coe.int/eng?i=CM/Del/Dec(2021)1411/H46-4E)

In that communication, the applicants reiterated their request to the Committee of Ministers to oblige the government to take steps to overturn the court's decision to remove them from the Bar and to reinstate them immediately.

At the 1411th meeting, the Government of Azerbaijan, in turn, in its communication, noted the individual and general measures taken regarding the applicants in this group of cases.

In connection with the case of *Namazov v. Azerbaijan*, the government stated that on 29.06.2020, the applicant had been compensated in the amount of 7,850 euros (7,000 euros in non-pecuniary damage and 850 euros in costs and expenses) as determined by the Court. The Court's judgment was translated into Azerbaijani and sent to the Bar Association of the Republic of Azerbaijan and other relevant government bodies.

In the case of *Bagirov v. Azerbaijan*, the Court found a violation of Articles 8 and 10 (Freedom of expression) and ordered the Government to pay the applicant 18,000 euros in damages. The government said in its communication that the compensation set by the ECtHR, including additional interest on the delay, had been paid to the applicant at three different times between November 3 and December 17, 2020, for a total of € 18,087.62. The Court's judgment was translated into Azerbaijani and sent to the Bar Association of the Republic of Azerbaijan and other relevant government bodies to determine individual and general measures. The Government added that in order to improve the quality and standards of conduct of lawyers, on December 7, 2017, the Bar Association of Azerbaijan adopted the Regulations on the Rules of Professional Conduct of Lawyers.

The case of *Aslan Ismayilov v. Azerbaijan*, which belongs to this group, differs exceptionally from the other two cases. So, by the decision of the Plenum of the Supreme Court dated 08.10.2021, it was decided to reconsider the case on appeal. On March 2, 2022, the Baku Court of Appeal overturned the decision of the Narimanov District Court. Following this decision of the Baku Court of Appeal, the applicant's advocacy activity was reinstated in accordance with the decision of the Presidium of the Azerbaijani Bar Association dated April 8, 2022.⁴²

The communication submitted by the Government on this case noted the general measures taken by the competent authorities after the Court's judgment. So, according to the Government, since 2018, large-scale work had been done to increase the number of advocates in the country, and the process of admission to the Bar had been simplified. Furthermore, the scope of responsibilities of the Bar Association was increased in 2020. The Order of the President of the Republic of Azerbaijan dated 03.04.2019 on Deepening Reforms in the Judicial System envisaged allocation of funds for legal assistance directly to the Bar Association, rather than through the relevant executive authority, in the state budget for 2020.

⁴² Communication submitted by the Government of Azerbaijan at the 1436th meeting on the case of *Aslan Ismayilov v. Azerbaijan*, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)461E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)461E)

In addition, during the quarantine period (July and December 2020 and January 2021) in connection with the COVID 19 pandemic, all advocates were exempted from paying membership fees. Moreover, advocates aged 60 and over were exempted from paying membership fees from March 24 to June 1, 2020.

The government finally noted that despite the increase in the number of advocates, the number of cases of disciplinary action against advocates has decreased. In many cases, the Bar did not initiate disciplinary proceedings against advocates on the basis of appeals from government bodies and did not send these appeals to the Disciplinary Commission of the Bar. As a result, 40% of appeals and complaints received from law enforcement agencies against advocates were not accepted by the Bar. In general, disciplinary measures were not applied in 81% of complaints and appeals.

However, the information provided by the government did not mention any changes or additions to the termination of advocates' activities and their removal from the Bar, nor did it take any general measures to improve disciplinary proceedings against lawyers and the rules for exclusion from the Bar.

The next subgroup of judgments related to the inviolability of private like is judgments regarding search and seizure. In the previous chapter, we noted that this subgroup includes two cases - Yunusova and Yunusov v. Azerbaijan and Avaz Zeynalov v. Azerbaijan.

The case of Yunusova and Yunusov v. Azerbaijan dated 16.06.2020 is one of the nine cases included in the Mammadov group of cases. However, the Action Plan submitted by the Government of Azerbaijan just mentioned this case, i.e. it did not envisage the application of specific individual measures related to the case.

In this regard, the Committee held its meeting No. 1428 (*see: the status of execution of the case of Intigam Aliyev v. Azerbaijan*).

Subsequently, the applicants requested the Committee in its communication⁴³ No. 1436, sent by their representatives via EHRAC, on 06.05.2022, to oblige the government to reconsider the case of the applicants at the Plenum of the Supreme Court and to ensure the execution of the judgment. In the case of Mrs and Mr Yunusovs, the Court ordered the government to pay € 31,438 in compensation, including all costs and expenses, to the applicants. Although the amount of this compensation was paid by the government on 03.03.2021, other measures related to the execution of the case have not been executed yet.

The Committee of Ministers of the Council of Europe held its meeting No. 1436 on 8-10 June 2022 to discuss the execution of some ECtHR judgments concerning Italy, Iceland, Poland, Turkey, Moldova, Greece, and other countries, including Azerbaijan. Among these judgments

⁴³ Communication No. 1436 in connection with the case of Mrs and Mr Yunusovs,
[https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)511E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)511E)

were those related to the Mammadov group of cases, including the cases of Yunusova and Yunusov v. Azerbaijan and Intigam Aliyev v. Azerbaijan. Adopting a resolution on the case of the group, the CM CoE said that the convictions of all applicants in the cases included in this group should be abolished, and all the negative consequences of opening a criminal case against the applicants should be eliminated.⁴⁴

In the case *Avaz Zeynalov v. Azerbaijan*, the ECtHR, which recognized a violation of Article 8, along with a violation of Article 5.3 (Right to liberty and security), Article 6.1, 6.2 (Right to a fair trial), and Article 10 (Freedom of expression), ruled that the Government was to pay the applicant € 10,000 in respect of non-pecuniary damage and € 3,000 in respect of costs and expenses, thus € 13,000 in total. The final hearing of the Court on this case was held on 22.07.2021. On 23.03.2022, the government compensated the applicant for the damage. However, the case is still in the execution stage. The execution period has not expired. Besides, the government has not submitted an action plan, and no other individual or general measures have been taken.

The judgments in the cases of *Rauf Mirgadirov v. Azerbaijan* and *Azer Ahmadov v. Azerbaijan* belong to the subgroup of judgments related to the interference in correspondence and telephone conversations.

The case of *Rauf Mirgadirov v. Azerbaijan* is slightly different from other cases. So, the responsible government here is not only the Republic of Azerbaijan but also the Republic of Turkey. The ECtHR concluded that the Government of Azerbaijan had violated the applicant's rights under Articles 5, 6, and 18 of the Convention and ordered the Government to pay the applicant € 20,000 and other costs and expenses. The government, which has not submitted any action plan for this case, has just paid compensation to the applicant so far.

The situation in the case of *Azer Ahmadov v. Azerbaijan* is not much different from the case of *Mirgadirov v. Azerbaijan*. So, the final court hearing on the case was held on 22.10.2021. Recognizing the violation of Article 8, the Court ruled that the government should pay the applicant a total of 7,000 euros and other costs and expenses. The government has not developed an action plan for this case, nor has it taken individual or general measures, including the payment of compensation.

The next category is the subgroup of judgments related to parent-child relations, which included the judgments in the cases of *Laman Babayeva v. Azerbaijan* and *Rasim Abushov v. Azerbaijan*. In addition, we would like to note that these cases are considered together under the Abushov group of cases. This report will describe the status of execution of both cases together.

⁴⁴ <https://aihmaz.org/%e2%84%9647145-14-m%c9%99mm%c9%99dli-grupu-az%c9%99rbaycana-qarsi-8-10-iyun-2022/>

The Action Plan⁴⁵ submitted by the Government of Azerbaijan in its communication dated 14.04.2022 stated that on 19 November 2021 the Plenum of the Supreme Court of the Republic of Azerbaijan reopened the proceedings and heard the case in accordance with Article 431-1.2.2 of the Code of Civil Procedure. As a result of the decision adopted at the Plenum, the judgment of the Supreme Court of 10 March 2011 and the judgment of the Ganja Court of Appeal of 14 October 2010 were quashed and the case was remitted to the Baku Court of Appeals for new reexamination. The representative of the Government, Chingiz Asgarov, added that the Department for the Execution of Judgments of the European Court of Human Rights would be duly updated of the results of the reexamination of the above case.

On 01.09.2021, the amounts of compensation determined by the Court in both cases (€ 4,500 and all other costs for the case of Babayeva v. Azerbaijan; € 1,722 and other costs for the case of Abushov v. Azerbaijan) were paid in full to the applicants.

However, despite the fact that the judgment on the case of Rasim Abushov v. Azerbaijan was made on 27.02.2020 and more than two years have passed, the Action Plan submitted by the Government has not addressed any issues other than compensation, nor did it provide information on individual measures to be taken in connection with the judgment, including general measures to improve practice and legislation.

The case of Eldar Ahmadov v. Azerbaijan belongs to the category of cases related to citizenship under Article 8. The ECtHR, which held its final hearing on 30.05.2020, recognized the violation of Article 8 in this case and decided that the government should pay the applicant 7,500 euros and all other costs and expenses in the form of compensation. Although the amount of compensation was paid to the applicant on 01.09.2021, the government has not yet submitted any action plan or taken any other action in this regard.⁴⁶

Accepting that reputation is protected by Article 8, the Court found a violation of Article 8 in the case of Khadija Ismayilova v. Azerbaijan. The representative of the applicant stated in the communication⁴⁷ submitted at the 1411th meeting on 17.06.2021 that the government had paid only part of the compensation to be paid to the applicant and no other measures had been taken. So, despite the recognition of the violated rights by the ECtHR, the applicant is still being persecuted as a journalist; furthermore, the Government has not yet withdrawn unfounded tax evasion and illegal business allegations against her. In its communication of 25 May 2021, the Government of Azerbaijan stated that the orders freezing Ms Ismayilova's bank accounts had been lifted, following the payment of a debt which Ms Ismayilova allegedly owed and that the

⁴⁵ Action Plan on the Abushov group of cases, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2022\)464E](https://hudoc.exec.coe.int/eng?i=DH-DD(2022)464E)

⁴⁶ Status of execution of the case of Eldar Ahmadov v. Azerbaijan, <https://hudoc.exec.coe.int/eng?i=004-55333>

⁴⁷ Communication of the applicant in connection with the case of Khadija Ismayilova v. Azerbaijan, [https://hudoc.exec.coe.int/eng?i=DH-DD\(2021\)621E](https://hudoc.exec.coe.int/eng?i=DH-DD(2021)621E)

travel ban imposed on Ms Ismayilova had been lifted, after the five-year probationary period expired on 25 May 2021.

Regarding the issue of compensation, the applicant stated that although she had to be paid 25,000 euros in compensation, the government had paid only part of it - 9,000 euros, and all other monies remain outstanding. This suggests that not only general but also individual measures have not been fully executed in connection with the judgment.

Considering the status of execution of the cases in which Khadija Ismayilova participated as an applicant, in its resolution adopted at the meeting No. 1436 dated 8-10 June 2022, the CM CoE noted that the Government of Azerbaijan should renew its investigation into the crimes it has committed and take all necessary steps to bring the perpetrators to justice. Moreover, the CM CoE called on the authorities to provide information on whether the applicant's disseminated personal information has been removed from publicly available resources, to take measures to improve the practice of local courts in ensuring the balance between the right to respect for private life and the right to freedom of expression, and to submit the latest status of execution of these issues before the December 2022 meeting of the Committee.⁴⁸

Finally, on 19.04.2022, the Court finalized the case of Hashemi v. Azerbaijan in connection with the issue of citizenship and ruled that the government should reimburse the applicant 2,100 euros and all other expenses in the form of compensation. The case is in the process of a three-month execution process, which was submitted to the government after the violation was recognized and the judgment was made by the ECtHR. Despite the fact that almost two months have passed since the judgment was made, the Government of Azerbaijan has not yet submitted any action plan and has not provided any information on individual and general measures to be taken.

⁴⁸<https://aihmaz.org/%c9%99riz%c9%99-%e2%84%9665286-13-x%c9%99dic%c9%99-ismayilova-grupu-az%c9%99rbaycana-qarsi-8-10-iyun-2022/>

8. Conclusions and recommendations

The study concluded that the status of execution of the Court's judgments against Azerbaijan is not very satisfactory. Even in the ranking of the member states of the Council of Europe for 2021, which is related to the execution of judgments, the Republic of Azerbaijan ranks 5th with 271 unexecuted judgments. 222 of these judgments are related to repetitive cases, and 49 are related to leading cases. The website aihmaz.org, which operates in Azerbaijan, notes that in terms of the percentage of execution of judgments by country, Azerbaijan ranks first in terms of non-execution.⁴⁹

During the preparation of the report, although the information requests, sent to the Plenum of the Supreme Court of the Republic of Azerbaijan and the Presidential Administration regarding the execution of judgments against Azerbaijan, guided by Article 50 of the Constitution of the Republic of Azerbaijan and Article 15 of the Law of the Republic of Azerbaijan on Access to Information, were not answered by the relevant authorities, the study revealed that individual and general measures were partially executed in four of the ECtHR judgments against Azerbaijan, the government only paid the amount of compensation to be paid to the applicants in eight judgments, and judgments were not executed at all in three judgments.

However, according to the Committee of Ministers of the Council of Europe on the execution of the ECtHR judgments, Azerbaijan's performance has improved relatively over the past three years. However, this activity must be consistent and sustainable, be focused on the execution of all judgments, and strengthen control over the execution of individual and general measures.

From the statistics on the execution of the above judgments, it can be concluded that although the government has focused on the payment of compensation, the execution of other measures has lagged behind. However, it should be noted that the issue of compensation is just one of the issues related to the execution of judgments. So, the issue of execution should not be limited to this, gaps in legislation and practice should be eliminated, and measures should be taken against the representatives of the state bodies violating the rights.

According to Article 111 of the Law of the Republic of Azerbaijan on Courts and Judges, one of the grounds for appealing against disciplinary proceedings against judges is violations of the law reflected in the judgments of the European Court of Human Rights and the Constitutional Court of the Republic of Azerbaijan. The inclusion of such a provision in the law is a correct approach, and it would be a positive step to include a similar provision in the Law on the Prosecutor's Office and the Law on the Police and to add it to the legislation as one of the grounds for disciplinary proceedings or dismissal under Articles 33 and 34 of these Laws.

⁴⁹<https://aihmaz.org/avropa-m%c9%99hk%c9%99m%c9%99si-q%c9%99rarlarinin-icrasi-2021-hansi-olk%c9%99-nec%c9%99-icra-edir/>

During the study, it became clear that there are certain gaps in the mechanism of execution of judgments. The most important of these is the lack of a state body directly responsible for the execution of ECtHR judgments in the country. The existence of such a body can lead to the strengthening of state control over the execution of the Court's judgments and more serious execution of these judgments.

As a result of the study conducted in the framework of this report, the following recommendations were made for stronger protection of the right to respect for private life in Azerbaijan and more serious execution of ECtHR judgments:

- 1) The Court's judgments against Azerbaijan show that the legislation is unclear and ambiguous and its quality is insufficient. Despite the judgments made by the ECtHR, no amendments or additions have been made to the legislation and relevant articles, which are related to Article 8 of the Convention, since 2014.

Recommendation – We recommend the Milli Majlis of the Republic of Azerbaijan bring these acts in line with international standards, in particular, the requirements of Article 8 of the ECHR, taking into account the laws described and analyzed in the “Monitoring of legislation” section of the report.

- 2) The lack of a unified body to oversee the execution of court judgments in the country calls into question the quality and objectivity of the execution of these judgments, further complicates the situation of applicants, and results in a loss of confidence in the rule of law and their rights.

Recommendation – We recommend the President of the Republic of Azerbaijan instruct the relevant executive authority to take measures to establish a special body to oversee the execution of ECtHR judgments and to transfer this oversight to a specific body.

- 3) Finally, in addition to eliminating the violations of law regarding Article 8, it is necessary to prevent such violations from being repeated and minimize them in the future, as well as to take measures against those who, in one way or another, participated in the occurrence of violations.

Recommendation – We recommend the Prosecutor General's Office of the Republic of Azerbaijan, the Ministry of Internal Affairs of the Republic of Azerbaijan, and the Ministry of Justice of the Republic of Azerbaijan organize regular trainings for judges and law enforcement officers (representatives of detective-search, investigation, and preliminary investigation bodies and prosecutor's office) under Article 8 of the ECHR.

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