

**POLICY PAPER**  
on the analysis of the  
legislation regarding  
administrative detentions and  
on the status of ill-treatment

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## **Summary**

This study was prepared by volunteers from the Institute for Democratic Initiatives to reflect the organization's position. The document is based on interviews with persons subjected to administrative detentions and data collected from the media, analyzed and verified by the facts. The purpose of the document is to draw attention to the offenses that result from politically motivated administrative detentions, to show the true reasons for the arrests, and to make recommendations to prevent such incidents. The report, developed with specific methodology and various monitoring methods, covers the following:

The introduction of the document provides a brief overview of the general situation in the country related to administrative detentions and the concept of administrative detention.

The next section analyzes the legislation. In this section, local legislation related to both administrative offenses and torture has been analyzed and compared to international documents supported by the Republic of Azerbaijan, as well as UN and European standards has been analyzed.

In the next section, reports of international organizations has been monitored and analysis of their recommendations has been made. Then, the overall statistics of administrative detentions for 2011-2018, as well as the various statistical analysis of politically motivated administrative detentions in 2018, has been analyzed. At the same time, a request was sent to the State Statistical Committee regarding the number of administrative detentions in 2018 and a response was received. The analysis shows that during 2011-2018, the number of administrative detentions increased from 3299 to 8,449, in other words, more than twice. 78 out of 8449 arrests in 2018 were politically motivated.

Finally, based on interviews with 15 politically motivated administrative detainees, ill-treatment and conditions of detention places in administrative detention has been analyzed. The analysis revealed that individuals were more likely to be ill-treated while in police custody, and subjected to more verbal harassment in detention places. Foods were given in small quantities and sanitary regulations were not followed in detention places.

At the end of the report, the results and recommendations of the monitoring are given. The recommendations are aimed at eliminating shortcomings in practice.

## **Introduction**

Although the Universal Declaration of Human Rights, the Covenant on Civil and Political Rights prohibits arbitrary arrest and ill-treatment, administrative detentions are widespread in Azerbaijan.

Administrative detention is a type of administrative offense for up to 3 months in exceptional cases. Unlike criminal cases, individuals subjected to administrative detentions can be sentenced to imprisonment from 10 to 90 days. According to statistics released by the SSC of the Republic of Azerbaijan, the number of administrative detentions between 2011 and 2018 has increased more than twice. While in 2011, 3,299 out of 28,026 individuals brought to administrative responsibility were subjected to administrative detention, in 2018, this number increased to 8,449 out of 62,110. This is confirmed by the fact that at least 78 out of 8,449 individuals were arrested with political motive. It is well known that the number of politically motivated arrests exceeds 78.

Although the law takes its application into consideration for exceptional cases, widespread use of administrative detentions underlines the importance of preparing report on this issue.

## **Methodology**

The report is based on the interpretation of the Code of Administrative Offenses of the Republic of Azerbaijan, international and regional conventions supported by Azerbaijan, reports of local and international organizations, statistics and decisions of the European Court and State Statistical Committee.

During the study, the analysis of domestic and international legislation was carried out. Monitoring of the reports of international organizations for eight years (2011-2018) was carried out in order to determine the direction of the trend. As well as, the results of the decisions of the European Court regarding both administrative detention and ill-treatment were also analyzed.

Fifteen people, who are arrested and subjected to the ill-treatment in 2018, have been interviewed. The interviewed people have had different political views. Based on the interviews, the main reasons of administrative detentions, ill-treatment and the conditions of temporary detention facilities in 2018 have been identified.

## **1. Analysis of Local Legislation**

### **1.1. Constitution of the Republic of Azerbaijan**

As the main law of the country, several articles of the Constitution of the Republic of Azerbaijan play an important role in the regulation of preventions of administrative detentions and ill-treatment.

It is mentioned in Article 46 of the Constitution<sup>1</sup>:

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<sup>1</sup> Constitution of the Republic of Azerbaijan, Article 46, <http://www.e-qanun.az/framework/897>

- I. *Everyone has the right to protect his or her honor and dignity.*
- II. *The State shall protect personal dignity. Nothing can justify humiliation of personal dignity.*
- III. *Nobody can be tortured or tormented, nobody shall suffer a treatment or punishment humiliating to human dignity. Nobody can be experimented upon-medically, scientifically or in any other way-without his or her consent.*

## **1.2. Code of Administrative Offenses**

The Code of Administrative Offenses regulates the legislation on administrative detention in Azerbaijan.

Article 12 of Chapter 2 of the CAO of the Republic of Azerbaijan explains the definition of an administrative offense as follows<sup>2</sup>:

*12.1. An administrative violation is characterized as a guilty (deliberate or careless) deed (action or inaction), infringing upon social relations protected by this Code, which would involve an administrative liability.*

*12.2. Administrative liability for actions specified in the Special part of this Code arises if such actions do not entail criminal liability.*

Article 30 of the CAO provides information on administrative detentions and cases of their application<sup>3</sup>:

*30.1. Administrative arrest is established and applied only in exceptional cases for special types of administrative violations for a term up to 15 days.*

*30.2. Administrative arrest shall not be applied to pregnant women, to women having a child younger 8 years, to men independently raising a child younger 8 years, to persons under age of eighteen, to disabled persons of 1<sup>st</sup> and 2<sup>nd</sup> groups, and also to women over 60, and to men over 65 years of age.*

*30.3. The term of the administrative detention is added to the term of the administrative arrest.*

Because administrative detentions are applied in exceptional cases, only certain articles of the CAO provide administrative detention as an administrative penalty. Administrative detention is applied for administrative violations that occur only in 20 articles of the Code. These articles are:

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<sup>2</sup> Code of Administrative Offenses, Article 12, <http://www.e-qanun.az/code/24>

<sup>3</sup> Ibid, Article 30

The prison sentence for **beatings and other violent incidents** is up to **2 months**.<sup>4</sup>

The prison sentence for **production, purchase, storage, transportation or forwarding, cultivation of drugs (narcotic substances) and psychotropic agents** can be up to **2 months**.<sup>5</sup>

The prison sentence for **theft and fraud actions** can be up to maximum duration, which is **3 months**.<sup>6</sup>

Persons committing **traffic violations** can be subjected to prison sentence **from 15 to 90 days**.<sup>7</sup>

The prison sentence for violation of rules for **production, processing, use, circulation of precious metals and precious stones and security, retail, registration, storage of products made by them, collection of scraps and management of waste** is up to **1 month**.<sup>8</sup>

The prison sentence for **minor hooliganism and auto hooliganism** is up to **2 months**.<sup>9</sup>

In addition to these, “Violation of the organization and conduct of meetings”<sup>10</sup>, “Violation of requirements of regime of emergency state”<sup>11</sup>, “Vagabondism”<sup>12</sup>, “Non-execution of requirements of corresponding body of executive power of the Republic of Azerbaijan, accomplishing the decisions of the court and other bodies”. “Non-execution of decisions on imposing administrative warning in the form of administrative penalty and public works”, “Intentionally disobeying the lawful request of a police officer or a military officer” are the articles where prison sentence is considered.

The CAO has undergone numerous changes since its adoption to the present day.

Although administrative detentions have been used as a tool of political pressure in previous years, amendment<sup>13</sup> on CAO in 2013 hardened these arrests. The main reason for this amendment was the peaceful rallies and flash mobs held regularly in the city center. Amendments to the legislation on toughening penalties have been included in the Parliament's agenda following the "End to Soldier Deaths" rally in center of Baku in January-March 2013. According to the amendments, the prison term was increased from 15 days to 3 months. Prior

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<sup>4</sup> Code of Administrative Offenses, Article 157, <http://www.e-qanun.az/code/24>

<sup>5</sup> Ibid Article 206 and 208

<sup>6</sup> Ibid Article 227

<sup>7</sup> Ibid Article 342-343

<sup>8</sup> Ibid Article 457

<sup>9</sup> Ibid Article 510-511

<sup>10</sup> Ibid Article 513

<sup>11</sup> Ibid Article 517

<sup>12</sup> Ibid Article 523

<sup>13</sup> <http://e-qanun.az/code/13>

to the change, the duration of administrative detention was 5-10 days, and after the changes it rose to 10-60 days, and fines were increased.

Under the 2014 amendment, a person who has been charged on administrative offense considering the application of the warning type of administrative detention can be detained for up to 48 hours. It was 24 hours beforehand.<sup>14</sup>

After 2016, administrative detentions have been launched even for rallies agreed with the government. Since 2016, a few days before the scheduled rally day, public activists, especially members of the opposition, have been summoned to the police station, warned, threatened, fined, and those who play a special role in the organization of the rallies and the direct organizers of the rallies have been subjected to administrative detentions mainly by charging with resisting a police officer (shown in the table at the end of the document). Over the past two years, up to 90% of the administrative arrests that public activists have faced have been charged with resisting a police officer.

Based on the ammendment on October 20, 2017, the sentence under Article 227, “**up to two months**” for “small robbery”, was replaced with “**up to three months**” imprisonment.<sup>15</sup>

In addition, based on the ammendment on May 14, 2013, the maximum prison term was 15 days, and now it has been extended to 90 days. According to the same amendment, under Article 68, 15 days imprisonment is replaced with up to 2 months imprisonment.<sup>16</sup>

## 2. Legislation Prohibiting Torture

The rights of persons subjected to administrative detention should be protected in the manner prescribed by domestic law. The Constitution of the Republic of Azerbaijan<sup>17</sup> and the Criminal Code of the Republic of Azerbaijan prohibit torture or ill-treatment to any person committed not just administrative offenses, even serious offenses. According to the Criminal Code, persons committing ill-treatment can be sentenced to prison up to 10 years.<sup>18</sup>

Article 5 § 2 of the Law of the Republic of Azerbaijan on Police states that it is inadmissible for a policeman to behave any person in an insulting manner. It is also prohibited to force a criminal or a person suspected to commit a crime to inform about or to confess the crime; to threaten criminals or other persons, to torture them or to apply physical or mental force in the aim of getting information.<sup>19</sup>

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<sup>14</sup> <https://www.azadliq.org/a/25353974.html>

<sup>15</sup> Code of Administrative Offenses, Article 227 [http://www.e-qanun.az/alpidata/code/data/0/c\\_c\\_24.htm#f2](http://www.e-qanun.az/alpidata/code/data/0/c_c_24.htm#f2)

<sup>16</sup> Code of Administrative Offenses <http://e-qanun.az/code/13>

<sup>17</sup> Constitution of the Republic of Azerbaijan, Article 46 <http://e-qanun.az/code/24>

<sup>18</sup> Criminal Code of the Republic of Azerbaijan, Article 113 <http://www.e-qanun.az/code/11>

<sup>19</sup> Law of the Republic of Azerbaijan on Police, Article 5 <http://www.e-qanun.az/framework/2937>

The Law of the Republic of Azerbaijan “On Operational Search Activity” prohibits torture or inhuman treatment. Article 8 of the Law states that it is prohibited to allow subjects of operational search activities to endanger people’s life, health, property and legitimate interests while exercising their powers, to incite any person into violence, to use force, to threaten and blackmail, as well as to take other unlawful measures restricting the human and citizens’ rights and freedoms, and their interests protected by law, to carry out actions beyond their authority.<sup>20</sup>

The CC of the AR<sup>21</sup> provides a number of penalties for torture. Article 133 of the Code states that a person causing strong physical pains or mental sufferings by violent actions is punishable by the imprisonment for the term up to three years.

### **3. Analysis of International Laws and Standards on Administrative Detentions and Ill-treatment**

#### **Constitution of the Republic of Azerbaijan**

Article 12 § 2 of the Constitution of the Republic of Azerbaijan states that the human rights and civil liberties enumerated in this Constitution shall be implemented in accordance with the international agreements to which the Republic of Azerbaijan is a party. Furthermore, Article 148 § 2 of the Constitution of the Republic of Azerbaijan states: “International treaties, to which the Republic of Azerbaijan is a party, are an inalienable substantive part of the legal system of the Republic of Azerbaijan.”<sup>22</sup> The conclusion is that if there is a discrepancy between the international treaties to which the republic is a party and local legislation, then international treaties will apply.

Therefore, the laws governing both administrative detention and ill-treatment must align with international law.

#### **3.1 International Documents**

Many international treaties and regional documents ratified by the Republic of Azerbaijan prohibit arbitrary arrest.

Article 3 of the Universal Declaration of Human Rights states that “Everyone has the right to life, liberty and security of person.”<sup>23</sup> Article 5 of the Declaration prohibits torture or cruel, inhuman or degrading treatment or punishment.

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<sup>20</sup> The Law “On Operational Search Activity”, Article 8 <http://www.e-qanun.az/framework/2938>

<sup>21</sup> The Criminal Code, Article 133 <http://www.e-qanun.az/code/11>

<sup>22</sup> <http://www.e-qanun.az/framework/897>

<sup>23</sup> [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/azb.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/azb.pdf)



The United Nations Convention “Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” prohibits torture absolutely and obliges States to ensure that no one in their territory is subjected to ill-treatment. The Convention also established a Committee against Torture to carry out the functions hereinafter provided by States Parties. The States Parties shall submit supplementary reports every four years on any new measures taken and such other reports. Azerbaijan ratified the Convention on August 16, 1996. The Protocol was added to the Convention in 2002, which established a Subcommittee against Torture in 2006. In addition to reviewing government reports, the subcommittee organizes visits and sends its representatives to countries to investigate the situation.<sup>24</sup> Azerbaijan signed this Protocol on January 28, 2009.

According to Article 9 § 1 of the International Covenant on Civil and Political Rights, “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>25</sup> Article 7 of the Covenant also prohibits torture or cruel, inhuman or degrading treatment or punishment. The Republic of Azerbaijan ratified the Covenant on August 13, 1992. This means that the Covenant is valid throughout the country.

### 3.2 UN and European Standards

The UN has developed a number of standards for the prevention of torture. Those standards are:

- “UN Standard Minimum Rules for the Treatment of Prisoners”
- “UN Basic Principles for the Treatment of Prisoners”
- “UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment”
- “Code of Conduct for Law Enforcement Officials”

These standards define how prisoners should be treated without degrading their honor and dignity and prohibit torture.

The Council of Europe has prepared a number of documents to prevent torture. Those documents are:

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<sup>24</sup> <https://ijrcenter.org/un-treaty-bodies/subcommittee-on-prevention-of-torture/>

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[https://www.migration.gov.az/content/pdf/5acb034968016\\_M%C3%BClki%20v%C9%99%20siyasi%20h%C3%BCquqlar%20haqq%C4%B1nda%20Pakt.pdf](https://www.migration.gov.az/content/pdf/5acb034968016_M%C3%BClki%20v%C9%99%20siyasi%20h%C3%BCquqlar%20haqq%C4%B1nda%20Pakt.pdf)

- “European Prison Rules” (revised 2006)
- “Declaration on the Police”
- “European Code of Police Ethics”
- Standards developed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

“Declaration on the Police” and “European Code of Police Ethics” prohibit police officers from using any form of ill-treatment in any case.

As Azerbaijan is a member of the UN and the Council of Europe, these standards must be applied throughout the country.

#### **4. Analysis of Administrative Detention and Ill-treatment in International Reports**

This section monitors and analyzes the reports of the visits of Council of Europe’s Committee against Torture, the annual reports of the US Department of State, Amnesty International and Human Rights Watch.

##### **4.1 International Reports**

The Council of Europe's Committee against Torture made five visits to Azerbaijan in 2011-2018. Visits were organized in 2012, 2013, 2015, 2016 and 2017. Four of the visits was made to prisons, and one visit to facilities for persons with mental or health disabilities. According to the 2012 report, the detainee has the right to notify his/her family or relatives of at the time of detention, so the Committee recommends the Government of Azerbaijan to create conditions for persons to contact their families or let the police do it. In addition, the Committee highlighted the problems with providing lawyers and doctors. The Committee also recommended not bringing detainees to the police for re-interrogation.<sup>26</sup> The 2015 report highlights recommendations for prison staff and the police on the rules of conduct. In fact, according to the Criminal Code of the Republic of Azerbaijan, the prison regime of the prisoner is determined by the court. According to the Committee, the prison officials should determine prison rules and regime, so the Committee recommends revising the Criminal Code. At the same time, the Committee encountered beatings (at least two cases) in prison No.14 and orphanage facilities. Therefore, the Committee recommended that the case should be stopped immediately and that the prison staff should be trained to resolve problematic situations.<sup>27</sup> In the 2016 report, the Committee made several recommendations regarding temporary administrative detention places. Administrative detainees may be detained in temporary

<sup>26</sup> <https://rm.coe.int/16808c5e1f>

<sup>27</sup> <https://rm.coe.int/16808c5e40>

detention facilities for a long time, but these facilities are not suitable for such a long time. Because there is no activity for the detainees. Therefore, the Committee recommended to the government to organize activities (such as radio, TV and board games), as well as telephone calls and meetings for long-term detainees in Temporary Detention Facilities (hereinafter TDF). In addition, the area of detention place for each inmate did not meet the minimum requirements (the minimum area for each inmate should be 4 m<sup>2</sup>). For example, the location for 4 inmates was 12 m<sup>2</sup> in the TDF of Sabunchu district, 12.5 m<sup>2</sup> in the TDF of Narimanov district, 13.5 m<sup>2</sup> in the TDF of Binagadi district, and 14 m<sup>2</sup> in the TDF of Goygol city. Therefore, the Committee recommends that all prisoners should be provided with a minimum area of 4 m<sup>2</sup>.<sup>28</sup> The 2017 report after committee's recent visit also covered issues related to nutrition and doctors, among other issues. According to the committee, doctors are forced to confirm that prisoners deserve punishment (disciplinary punishment). The Committee urged authorities to repeal such requests to doctors. In addition, according to the Committee, persons are detained in police buildings, hallways, and offices for several hours, sometimes overnight, and are not allowed to go to the toilet or eat. The Committee urged authorities to stop using police buildings, hallways as detention facilities, to create conditions for using toilets and to provide detainees with at least one meal a day.<sup>29</sup>

In addition to the Committee, annual reports of the US Department of State, Amnesty International and Human Rights Watch contain numerous facts about torture and illegal detention. According to these reports, torture and other ill-treatment generally occurred while in the police station. Torture and other ill-treatment are stopped when persons are transferred to the temporary detention facilities.

Politically motivated administrative detentions occurred more while individuals' exercising freedom of assembly.

#### 4.2 Reports of the UN Subcommittee on Torture

Until today, the UN Subcommittee against Torture has published 12 annual reports. Each report includes visits to certain countries. Although the visit to Azerbaijan took place on September 8-17, 2014, the Committee aborted its visit on September 14 due to interference. The Committee's access to temporary detention facilities has been restricted.<sup>30</sup> Then, on April 16-24, 2015 (6 months later), the Committee completed its visit to Azerbaijan. This time, restrictions on visits to detention facilities were removed and the Committee was able to meet with detainees at the same time.<sup>31</sup> Unfortunately, the text of the report is confidential and not shared with the public.<sup>32</sup>

<sup>28</sup> <https://rm.coe.int/16808c5e43>

<sup>29</sup> <https://rm.coe.int/16808c5e46>

<sup>30</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15047&LangID=E>

<sup>31</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15886&LangID=E>

<sup>32</sup> [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Alphabetical](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Alphabetical)

### 4.3 Decisions of the European Court

Article 3 of the Convention prohibits torture and ill-treatment. The European Court recognizes ill-treatment only when it comes to a minimum level of violence. In all three cases of the Court related to Azerbaijan (Mustafa Hajili v. Azerbaijan<sup>33</sup>, Mehdiyev v. Azerbaijan<sup>34</sup>, Emin Huseynov v. Azerbaijan<sup>35</sup>), the Court recognized the violation of Article 3. The Court recognized the violations just because the government delayed the examination, did not take advantage of all the evidence and opportunities, and received only police statements.

Article 5 of the Convention prohibits arbitrary arrest of persons. The Convention recognizes the breach of Article 5 when there are bad intentions in custody and where the law has not been properly applied. In two cases regarding this (Gafgaz Mammadov v. Azerbaijan<sup>36</sup>, Huseynli and Others v. Azerbaijan<sup>37</sup>), the Court recognized the violation of Article 5. In both cases, it can be concluded that although the applicants were officially charged with resisting a police officer, they were detained for participating in demonstrations and being active members of political parties.

## 5. Statistics of Administrative Detentions

### 5.1 Administrative Detentions between 2011-2018

According to statistics released by the State Statistical Committee, the number of administrative arrests between 2011-2018 has increased more than twice.<sup>38</sup> If in 2011, 3299 out of 28026 persons brought to administrative responsibility were subjected to administrative detention, in 2018, this number was 8449 out of 62110. In addition, while looking at the statistics for 2011-2018, it is clear that warnings were used less frequently as the type of

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[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22%22CASE%20OF%20MUSTAFA%20HAJILI%20v.%20AZERBAIJAN%22%22\],\[%22languageisocode%22:\[%22ENG%22\],\[%22respondent%22:\[%22AZE%22\],\[%22documentcollectionid%22:\[%22JUDGMENTS%22\],\[%22violation%22:\[%223%22\],\[%22itemid%22:\[%22001-168862%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22%22CASE%20OF%20MUSTAFA%20HAJILI%20v.%20AZERBAIJAN%22%22],[%22languageisocode%22:[%22ENG%22],[%22respondent%22:[%22AZE%22],[%22documentcollectionid%22:[%22JUDGMENTS%22],[%22violation%22:[%223%22],[%22itemid%22:[%22001-168862%22]})

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[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22case%20of%20mehdiyev%22\],\[%22languageisocode%22:\[%22ENG%22\],\[%22respondent%22:\[%22AZE%22\],\[%22documentcollectionid%22:\[%22JUDGMENTS%22\],\[%22violation%22:\[%223%22\],\[%22itemid%22:\[%22001-155196%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22case%20of%20mehdiyev%22],[%22languageisocode%22:[%22ENG%22],[%22respondent%22:[%22AZE%22],[%22documentcollectionid%22:[%22JUDGMENTS%22],[%22violation%22:[%223%22],[%22itemid%22:[%22001-155196%22]})

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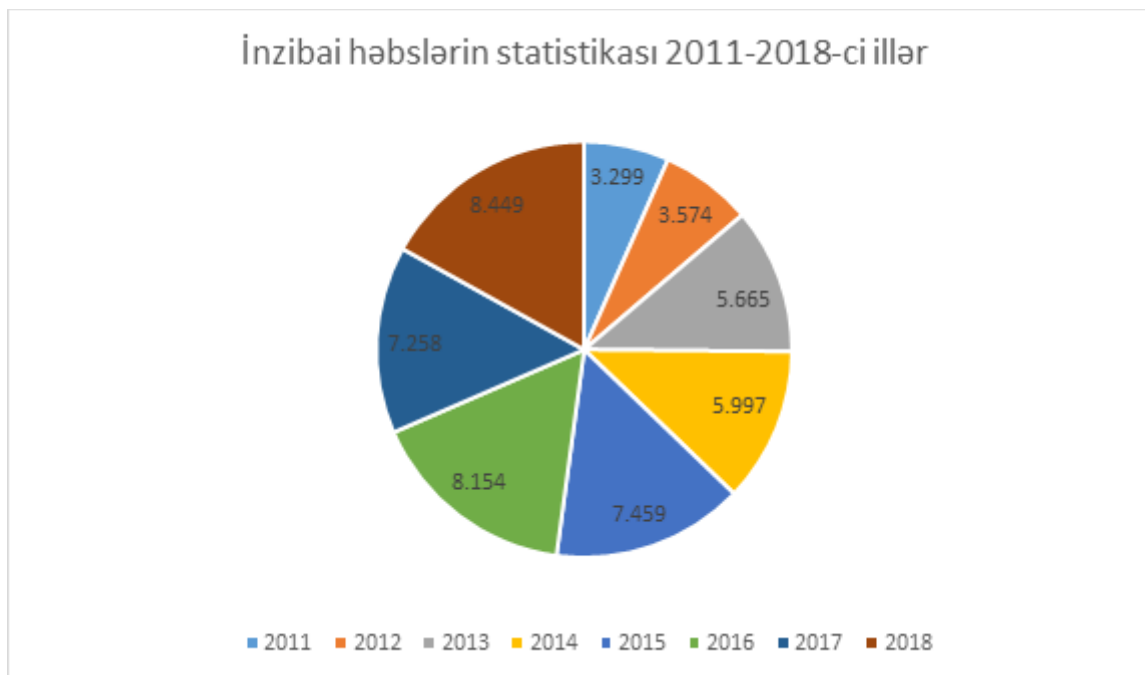
[https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%22case%20of%20emin%20huseynov%22\],\[%22languageisocode%22:\[%22ENG%22\],\[%22respondent%22:\[%22AZE%22\],\[%22documentcollectionid%22:\[%22JUDGMENTS%22\],\[%22violation%22:\[%223%22\],\[%22itemid%22:\[%22001-154161%22\]}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22case%20of%20emin%20huseynov%22],[%22languageisocode%22:[%22ENG%22],[%22respondent%22:[%22AZE%22],[%22documentcollectionid%22:[%22JUDGMENTS%22],[%22violation%22:[%223%22],[%22itemid%22:[%22001-154161%22]})

36 [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],\[%22itemid%22:\[%22001-160429%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-160429%22]})

37 [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],\[%22itemid%22:\[%22001-157705%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],[%22itemid%22:[%22001-157705%22]})

38 <https://www.stat.gov.az/source/crimes/> - Persons brought to administrative responsibility on the case of first instance courts, on the cases related to administrative offenses in the first instance courts.

administrative warning.<sup>39</sup> This is a reduction of more than 1,000 times. A graphical description of general statistics is as follows:

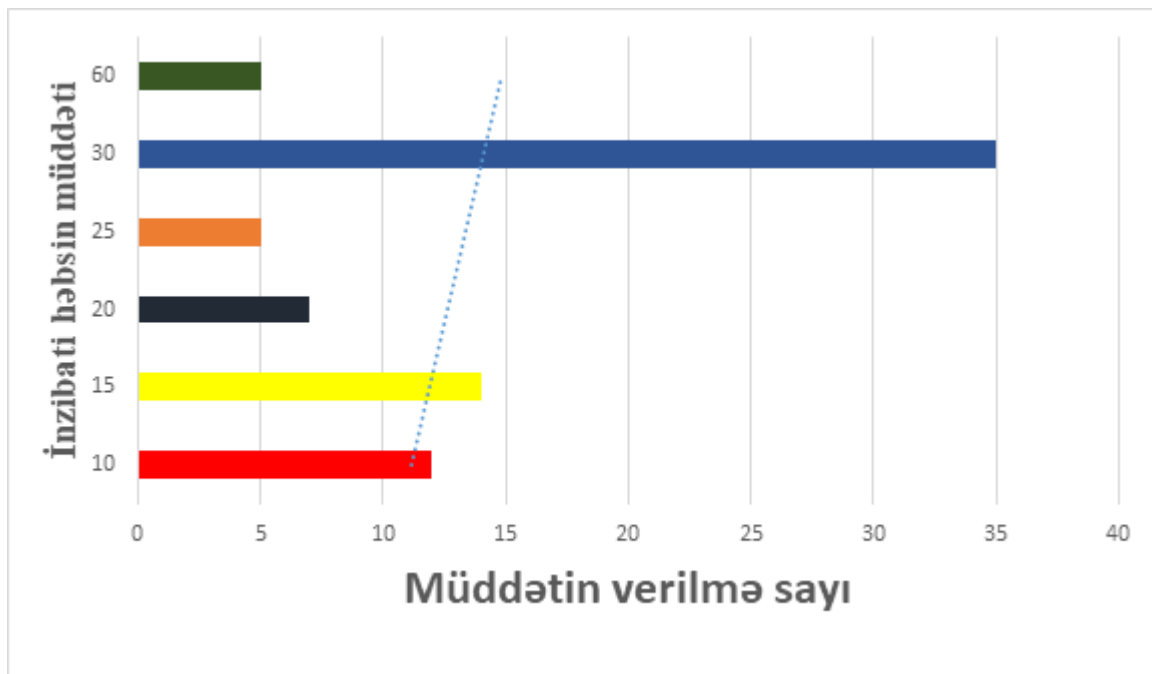
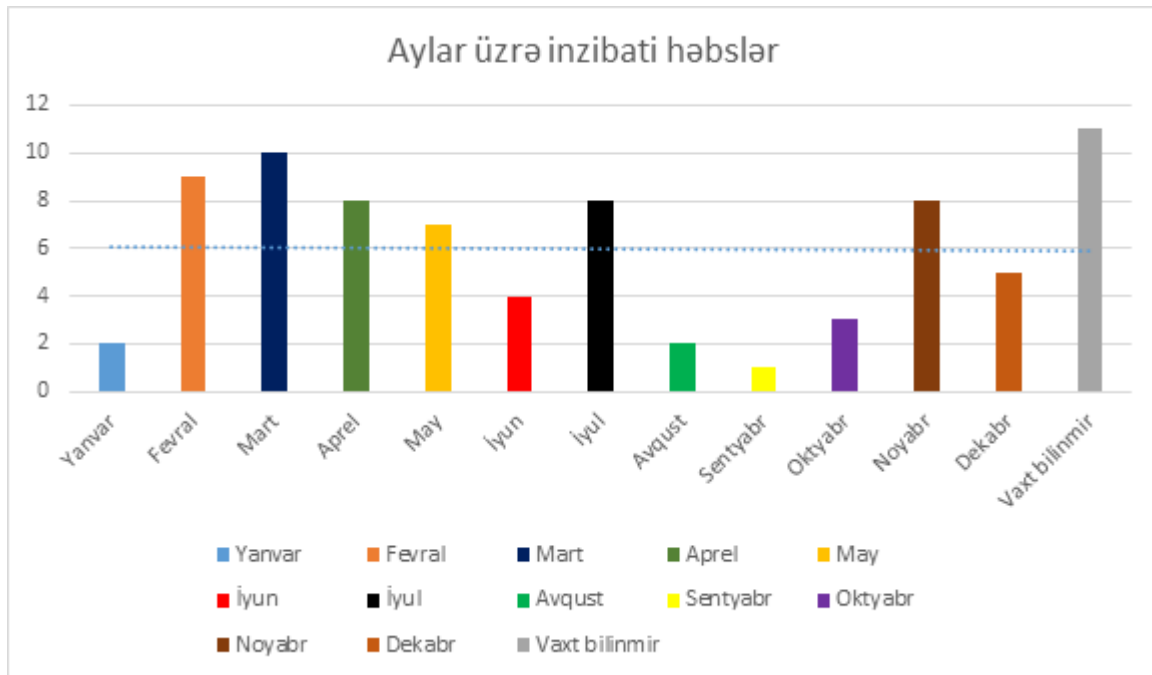


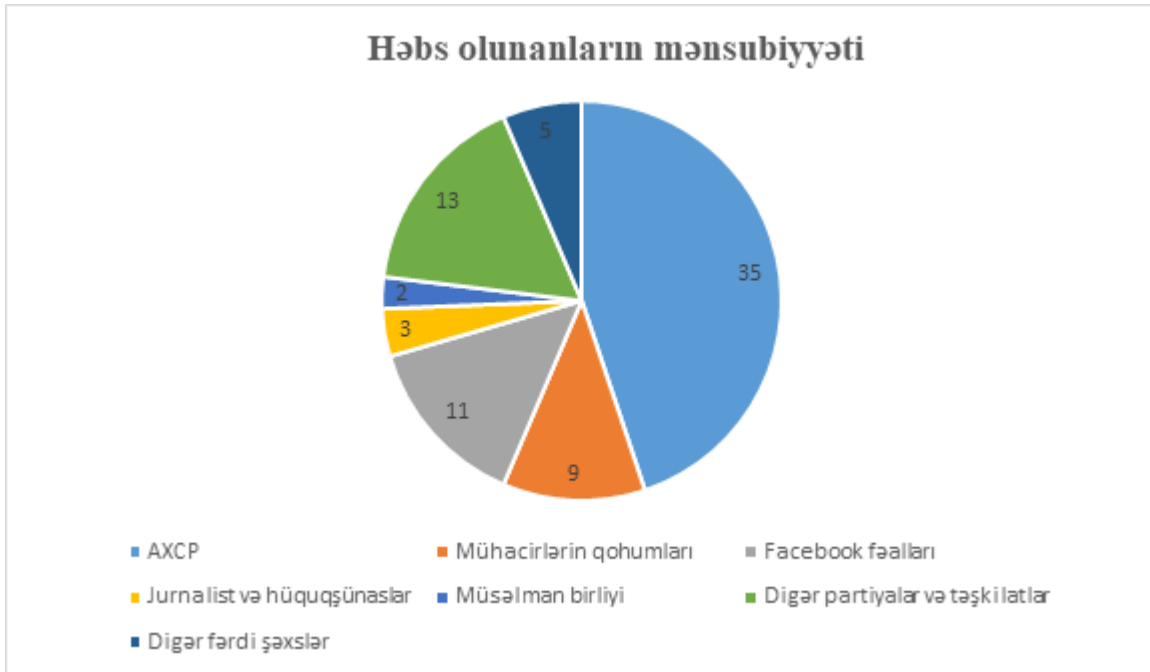
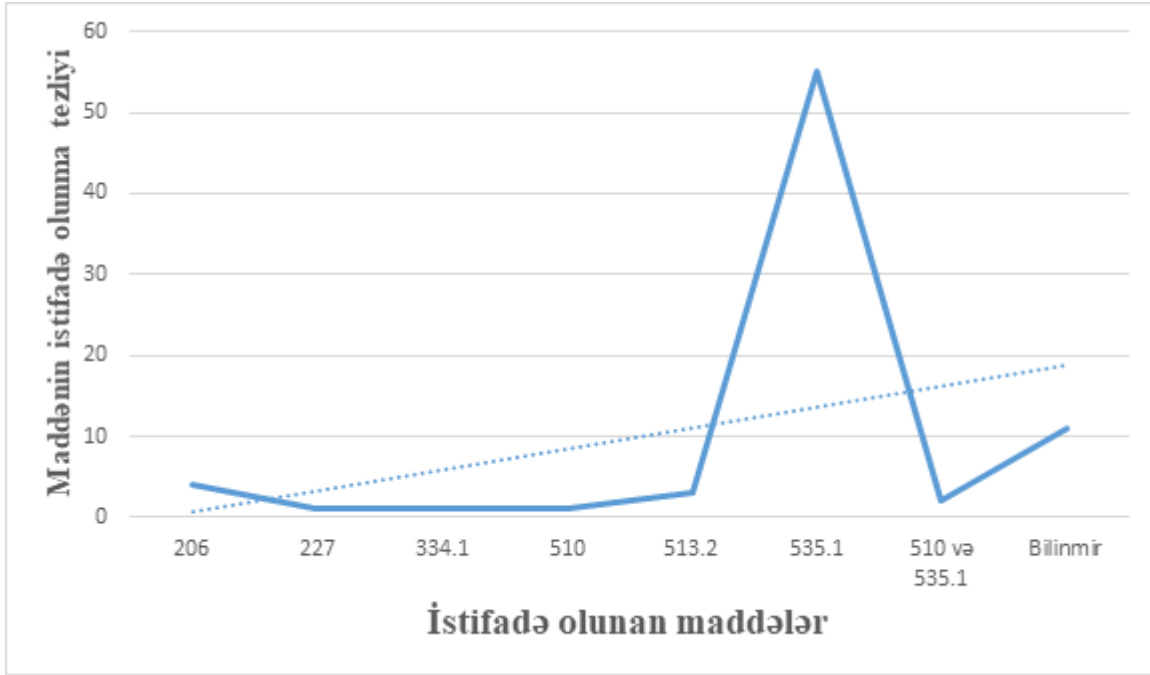
## 5.2 Politically Motivated Administrative Detentions in 2018

In 2018, 78 out of 8449 people who were subjected to administrative detention were arrested with political motive. From 78 people subjected to administrative detention (35 people), were members of the Azerbaijan Popular Front Party (hereinafter PFPA). In three permitted rallies held by the National Council during the April 11, 2018 presidential elections, 174 people were summoned to police departments, 17 of them were sentenced to 10 to 30 days administrative arrests by the charge of resisting the police, and the rest were fined in the same way or released without warning. On May 28, 2018, a visit to the Republic Monument by the REAL Party and many civil society activists was organized concerning the 100<sup>th</sup> anniversary of Azerbaijan Democratic Republic. After the visit, participants were not allowed to walk to Baku Boulevard. A day after the event, more than 10 people, including the REAL Party vice chairman, were summoned to the police station, and four of them were sentenced to 25-30 days administrative arrest.

The number of administrative detention days varied between 10 and 60 days. During this period, the most arrests were in March, and the least arrests were in September. Those who were subjected to administrative detention (in 55 cases) were arrested with the Article 535.1, which is, intentionally disobeying the police. In two cases, Article 510 (violation of the Right to Freedom of Assembly) and Article 535.1 were applied. The following is a comparison of the statistics for 2018 with different graphs:

<sup>39</sup> <https://www.stat.gov.az/source/crimes/> - Electronic version, Crime and Offenses in Azerbaijan, 2019





## 6. Ill-treatment and Conditions of Detention Places in Administrative Detention in 2018

This section analyzes ill-treatment and conditions of detention places based on interviews with 15 individuals subjected to politically motivated administrative arrest. According to interviews, those individuals are often subjected to inhuman treatment both in pre-trial detention centers and in temporary detention facilities where they are sent after a court order. This occurs mainly in two forms.

1. Storage facilities do not meet the requirements.
2. They are subjected to physical and psychological violence by the police.

On the other hand, they are not provided with a lawyer, state-provided lawyers carry out direct orders from investigative agencies, they are not given daily newspapers to read, medical examinations are not routinely conducted, telephone calls and meetings are not allowed. In some cases, detainees are even tortured.

In addition, those who were subjected to administrative detention say that they are taken to police stations without any justification, and without a fair trial, the courts make decisions and convict them to administrative detention based on the police statement. Courts generally consider the opinions of law enforcement agencies valid.

Despite numerous complaints and allegations regarding torture and ill-treatment made by suspected, accused persons, including those who were sentenced to administrative detention, these allegations are not objectively investigated by the higher law enforcement agencies or the courts. In the annual reports of the Commissioner for Human Rights of the Republic of Azerbaijan (Ombudsman), besides, torture allegations are not mentioned, even it is alleged that torture and other ill-treatment cases have not occurred in law enforcement agencies, temporary detention facilities, and prisons. For example, Ombudsman's annual report for 2018 uses the word "torture" only twice to claim that torture has not occurred.<sup>40</sup> As for other forms of ill-treatment, the Report also strongly denies such cases. However, reports related to the torture and ill-treatment by both the UN<sup>41</sup> and the relevant committees of the Council of Europe<sup>42</sup> indicate that torture is widespread in Azerbaijan and has been used as one of the main means of confession of physical and psychological pressure and they provide examples.

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<sup>40</sup> <http://www.ombudsman.gov.az/az/view/pages/59>

<sup>41</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAZE%2fCO%2f4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fAZE%2fCO%2f4&Lang=en)

<sup>42</sup> <https://www.coe.int/en/web/cpt/-/azerbaijan-torture-impunity-and-corruption-highlighted-in-new-anti-torture-committee-publications>



## 6.1 Ill-treatment

In an interview with 15 politically motivated administrative detainees, it was revealed that they had been physically and psychologically pressured during their detention. They claim that their rights were not protected in accordance with the law while in detention places. The main problems they face during administrative detention are poor quality food, not using the bath, restrictions on sleeping during a day, and so on.

Our interviewees were from the PFPA, REAL Party, Musavat Party, D18 movement and individuals. One of our interviewees, Arastun Bakhshaliyev, a member of the REAL Party, said he was arrested under the article of “Resisting the police” (Article 535.1). However, the real reason was his attendance to a commemorative event on May 28, the Republic Day. Our interviewees said that he was mistreated from the moment of his detention and was not allowed to go outdoors during his detention. The food consisted of water and biscuits.

Another member of the party, Samir Ashurov, said that the real reason was his calling for the rally. He added that when he was detained, police mistreated and humiliated him, and he was subjected to physical violence; they had him clear the floor, clean the toilet, and recorded these with a camera. He said he did all these under pressure, and they threatened to beat him with a nightstick unless he followed the order. The young activist added that he was beaten in the Sabunchu District Police Office for about an hour, at the same time, he was tortured with electric shocks. In the Binagadi Detention Center, he said eight people were beating him at the same time.

Among those arrested on the eve of the rally, Baba Suleyman, a member of the PFPA, said that during his administrative detention, the politicians were not subjected to any pressure. The main pressure was against drug dealers. The reason was that political activists were aware of their rights. The main problems during his arrest were terrible foods and inability to sleep during a day.

Zaur Rovshanli, a member of the D18 movement, said he faced police intervention while waiting for a taxi and when he wanted to investigate the motive, he was taken to the police station and was given 10 days administrative arrest for resisting the police. He said that he was not subjected to ill-treatment but there were lack of good nutrition and bath. Young activist said that other means of harassment to those subjected to administrative detention were the seizure of a portion of the food, which was sent to them, by staff.

Another activist, Bashir Tarverdiyev, said that he was sentenced to 20 days administrative arrest for resisting the police because he was a member of the PFPA. He said he was kept at the police station with his hands tied behind his back for 7 hours. Only after the doctor’s insistence, his hands were opened. Another member of the party, Ismayil Hasanov, said when detained, he was threatened at the police station and the detention center.

## **6.2 Conditions of Detention Places**

Persons sentenced to administrative detention are held in the administrative detention facility in Binagadi district. In some cases, they may be held in temporary detention places of the police. In addition, those who are administratively deprived of freedom in the regions are also held in police stations.

Responding to the questions regarding the conditions of detention places, our interviewees say that sometimes more people stays in the cell; therefore, they are forced to sleep in shifts.

For example, our interviewee Elvin Abdullazadeh (Musavat Party) said that although the cell he stayed was for only 6 people, there were 12 people stayed. Another individual interviewee, Emin Aslanov, said 8 to 10 people were kept in cells, which were only for 6 people.

Many interviewees commented on the nutritional conditions that the food was in small quantities and low calorie. For example, Baba Suleymanov, a member of the PFFPA, noted that although the meals were given three times a day, they were not tasty and were presented in small quantities. Zaur Rovshanli, a member of the D18 movement, said that the police seized the food sent to them. For example, if two pieces of bread were sent, the police seized one. As Emin Aslanov noted that he got food from outside due to the lack of calories. A member of the PFFPA, Hikmat Aliyev, said their meal consisted of a “¼ part of stale bread, a liquid similar to tea, and a low-quality meal”. Arastun Bakhshaliyev, a member of the REAL Party, said his daily meal consisted of water and 3-6 biscuits. He lost 14 kg weight at the time leaving the Binagadi Detention Center.

Ill-treatment in detention facilities were more in various forms than physical violence (verbal pressure and not allowing detainees to air). The pressure occurred mostly on the police station. According to Ruslan Nasirli, as he was finishing his administrative arrest, a deputy police department named Anar threatened him with long-term imprisonment. Zaur Rovshanli, a member of the D18 movement, said he was not allowed to have a bath. Samir Ashurov, a member of the REAL Party, noted that he has cleared floors throughout the administrative detention and was recorded via mobile phone. He was also threatened with beating with a nightstick. Hikmet Aliyev, a member of the PFFPA, said that during the 15 days administrative detention, he was allowed to go outdoors only once - on the way to the Court of Appeal.

## **Result and Recommendations**

1. Public activists are subject to administrative detention for their social and political activities, not because they have committed any administrative offense. These administrative arrests are politically motivated and implemented without a fair trial, without adequate protection, and by the decision of local courts based on police statements. Such administrative arrests undermine the freedom of expression, freedom of assembly and association in a democratic society, leading to the narrowing of the scope of rights and freedoms.

2. Proceedings in the local courts are short-lived, which deprives the person, for whom a protocol of administrative offence was drawn up, to establish his/her defense effectively. On the other hand, the absence of a state prosecutor in local courts is another example of the fact that the legal proceedings do not comply with the European Convention. Thus, since the state prosecutor does not participate in administrative proceedings, the judge also defends the state charges, which violates the principle of fairness. Complaints related to politically motivated administrative arrests prevail among the appeals from Azerbaijan to the European Court.<sup>43</sup> From the appeals related to politically motivated administrative arrests to the European Court, it has made 21 decisions so far that, in almost all of them, the administrative detentions were aimed at preventing activists who participated in or intended to participate in the rallies.

Penal policy is very strict on administrative offenses. According to statistics, the use of warning form of administrative penalty has decreased suspiciously. The obvious domination of disobeying the legal requirements of police among administrative offenses demonstrates that it is either a lack of trust between the police and the citizens, or an indication that the police are abusing this article.

3. Despite severe changes to the Code of Administrative Offenses in 2013, the number of administrative arrests continues to increase rather than decrease. This also shows that tough penal policies are not effective in combating administrative offenses.

Another problem faced by politically motivated administrative detainees is that they are subjected to ill-treatment even after detention. Interviews revealed that those subjected to administrative detention were mistreated in police custody, and after being sentenced, in the temporary detention facilities, especially in Binagadi Detention Center. They were physically and psychologically pressured to attend rallies and gatherings, detained in moist and cold places that did not meet the standards, and in some cases were not provided with bed. They were prohibited from importing food during the sentencing period, while the meals provided in the detention facilities was very in small quantities, below the level required for a person's daily nutrition.

Considering the above, we recommend the following:

- Since the toughening legislation on administrative detentions does not solve the problem, softer means should be used. For example, a warning may be used more as a form of administrative punishment.
- There needs to be fundamental reform in the police to build trust between the police and citizens.

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<sup>43</sup> <http://hudoc.exec.coe.int/eng?i=004-1743>

- In such cases, the protection of rights and freedoms and the principles of fair trial must be brought into line with the requirements of the European Convention.
- The use of administrative arrests as a means of political pressure should be stopped.
- People should not be summoned to the police station for their political activities and participation in rallies, and the detainees should be contacted immediately with their lawyers and family.
- Physical and psychological pressure on detainees should be eliminated, the condition of detention places and meals should be improved, they should be provided with adequate bed and their detention conditions must meet minimum standards.
- During the trial, all processes must be investigated fairly and an adequate decision must be made.
- The international obligations undertaken by Azerbaijan during administrative arrests must be fulfilled.
- Criminal proceedings should be applied against police and other responsible persons for torture and ill-treatment and all the facts should be fairly investigated.
- Since it is among the ombudsman's main activities, torture and ill-treatment should be included in a separate section of the report, all public news about torture should be reported, the requests, that responsible persons should be brought to justice, should be clearly expressed.
- Issues related to legislation and practice enshrined in ECHR decisions should be implemented promptly in accordance with Article 46 § 1 of the Convention.

### **List of Those Subjected to Politically Motivated Administrative Detentions in 2018**

<b>No.</b>	<b>Name and Surname</b>	<b>Date</b>	<b>Belonging</b>	<b>Court</b>	<b>Relevant article of the COA</b>	<b>Punishment (with days)</b>
1.	Natig Kazimov	January 5	PFPA	Absheron District Court	535.1	30
2.	Huseyn Hasanli	January 28	Classic Popular Front Party	Narimanov District Court	535.1	30

3.	Samir Babayev	February 3	Muslim Union Movement	Sabunchu District Court	206	60
4.	Mahir Guliyev	February 3	Muslim Union Movement	Sabunchu District Court	535.1	30
5.	Elman Aghayev	February 13	Relative of Immigrant Activist Muhammad Mirzali	Binagadi District Court	535.1	30
6.	Abdulla Abuzarov	February 17	Relative of Immigrant Activist, Elmir Shiraliyev	Hajigabul District Court	535.1	30
7.	Sabuhi Zeynalov	February 19	Relative of Immigrant Activist Ordukhan Teymurkhan	Narimanov District Court	535.1	30
8.	Tural Aliyev	February 19	Relative of Immigrant Activist Ordukhan Teymurkhan	Narimanov District Court	535.1	30
9.	Aydin Mammadov	February 20	Relative of Immigrant Activist Jamal Seyidli	Nizami District Court	535.1	30
10.	Elgiz Sadigli	February 23	Brother of Immigrant Activist Tural Sadigli	Sabunchu District Court	535.1	30
11.	Tofiq Mammadov	February 23	PFPA	Yasamal District Court	535.1	15
12.	Yalchin Abdullayev	March 7	PFPA	Binagadi District Court	535.1	15

13.	Faig Naghiyev	March 7	PFPA	Khatai District Court	535.1	20
14.	Tahir Aghayev	March 7	PFPA	Khazar District Court	535.1	15
15.	Bashir Tariverdiyev	March 7	PFPA	Nasimi District Court	535.1	20
16.	Hikmat Aliyev	March 7	PFPA	Binagadi District Court	535.1	15
17.	Agil Maharramov	March 8	PFPA	Sabunchu District Court	535.1	15
18.	Samir Ashurov	March 13	REAL	Sabail District Court	535.1	15
19.	Abdulla Mahmudov	March 27	PFPA	Sabunchu District Court	535.1	30
20.	Orkhan Bakhishli	March 27	PFPA	Khatai District Court	535.1	30
21.	Ayaz Gasimov	March 27	PFPA	Binagadi District Court	535.1	15
22.	Baba Suleymanov	April 13	PFPA	Nasimi District Court	535.1	15
23.	Aliagha Mammadov (Ali Imankhanli?)	April 13	PFPA	Masimi District Court	535.1	15
24.	Ismayıl Hasanov	April 13	PFPA	Nasimi District Court	535.1	15
25.	Sagif Gurbanov	April 13	PFPA	Sabail District Court	535.1	15
26.	Vidadi Guliyev	April 14	PFPA	Sabail District Court	535.1	15
27.	Ruslan Nasirli	April 14	PFPA	Saatli District Court	535.1	

28.	Maharram Jaliloghlu	April 25	Son of PFPA activist Jalil Maharramov	Binagadi District Court	206	60
29.	Tural Aliyev	April 30	Nephew of Immigrant Activist Ordukhan Teymurkhan	Nizami District Court	206	60
30.	Aflatun Safarov	May 19	PFPA	Lankaran District Court	535.1	30
31.	Elvin Abdullazadeh	May 22	Musavat	Khatai District Court	535.1	30
32.	Rahib Salimov	May 22	PFPA	Nizami District Court	535.1	25
33.	Azar Gasimli	May 29	REAL	Yasamal District Court	535.1	30
34.	Elmin Hamzayev	May 30	REAL	Binagadi District Court	535.1	25
35.	Arastun Bakhshaliyev	May 30	REAL	Yasamal District Court	535.1	30
36.	Nariman İsmayılov (Mujahid)	May 30	REAL	Nizami District Court	535.1	30
37.	Emin Aslanov	June 4	Lawyer	Narimanov District Court	535.1	30
38.	Anar Mammadov	June 7	REAL	Yasamal District Court	535.1	10
39.	Fuzuli Huseynov	June 14	PFPA	Sabail District Court	535.1	10
40.	Rauf Abdurahmanli	June 14	PFPA	Shaki District Court	510	30
41.	Yashar Ferazi	July 4	PFPA	Absheron District Court	535.1	30

42.	Rabil Gurbanov	July 4	PFPA	Surakhani District Court	535.1	30
43.	Afgan Sadigov	July 7	Journalist	Narimanov District Court	510 and 535.1	30
44.	Elkhan Aliyev		Facebook activist			30
45.	Agil Mehdiyev		Facebook activist			30
46.	Ali Rahimov		Facebook activist			30
47.	Rashad Jamalov		Facebook activist			30
48.	Elsevan Shikhaliyev		Facebook activist			30
49.	Ilqar Guliyev		Facebook activist			30
50.	Rufat Aliyev		Facebook activist			30
51.	Ilknur Shirinov		Facebook activist			25
52.	Sadi Karimov		Facebook activist			20
53.	Babak Huseynli		Facebook activist			10
54.	Afig Hashimov		Facebook activist			10
55.	Ramin Ahmadov	July 10	PFPA	Lankaran District Court	535.1	25
56.	Tahir Mustafayev	July 10	PFPA	Gazakh District Court	535.1	10
57.	Vugar Rzali	July 12	Musavat	Jalilabad District Court	535.1	20
58.	Namig Ibrahimov	July 25	PFPA	Masalli District Court	535.1	30
59.	Zafar Ahmadov	July 27	PFPA	Khatai District Court	535.1	30
60.	Ramin Ahmadov	August 21	PFPA	Yasamal District Court	535.1	15
61.	Bashir Tanriverdiyev	August 21	PFPA	Yasamal District Court	535.1	10



62.	Aziz Gahramanov (Shahinoghlu)	September 15	Musavat	Yasamal District Court	535.1	10
63.	Nemat Panahli	October 12	National Statehood Party	Nasimi District Court	535.1	30
64.	Ilqar Aydin	October 22	Young activist	Absheron District Court	227	60
65.	Ibrahim Ibrahimov	October 25	PFPA	Tovuz District Court	535.1	30
66.	Zaur Rovshanli	November 8	D18 Movement	Nizami District Court	535.1	10
67.	Mirtaghi Asadov	November 8	Chairman of the Supreme Religious Administration of Georgia's All Muslims	Narimanov District Court	510 and 535.1	30
68.	Aghababa Jafarov	November 19	PFPA	Sabail District Court	513.2	20
69.	Ruslan Amirov	November 19	PFPA	Sabail District Court	513.2	20
70.	Javid Ibrahimov	November 19	PFPA	Sabail District Court	513.2	20
71.	Elman Aghayev	November 20	Relative of Immigrant Activist Mahammad Mirzali	Binagadi District Court	206	60
72.	Ramin Abdurahmanov	November 23	PFPA	Shaki City Court	334.1	10
73.	AfGan Sadigov	November 27	Journalist	Sabail District Court	535.1	30

74.	Huseyn Malikov	December 5	ADW (Azerbaijan Democracy and Welfare) Movement	Sabail District Court	535.1	25
75.	Toghrul Gojayev	December 11	Son of a martyr	Sabail District Court	535.1	30 ( <i>The Court of Appeal reduced the sentence to 15 days</i> )
76.	Namiq Jafarov	December 24	Resident of “Sovetsky” (his house was demolished)	Yasamal District Court	535.1	10
77.	Bakhtiyar Rasulov	December 24	Resident of “Sovetsky” (his house was demolished)	Yasamal District Court	535.1	10
78.	Tofiq Jafarov	December 24	Resident of “Sovetsky” (his house was demolished)	Yasamal District Court	535.1	10

## **Abbreviations**

CAO	Code of Administrative Offenses
SSC	State Statistical Committee
AR	Azerbaijan Republic
CC	Criminal Code
ECHR	European Court of Human Rights
PFPA	Popular Front Party of Azerbaijan
REAL Party	Republican Alternative Party
TDF	Temporary Detention Facility

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*Reference to IDI is compulsory when using information.*

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