



**IMPLEMENTATION OF
JUDGMENTS OF THE
EUROPEAN COURT OF
HUMAN RIGHTS:
AZERBAIJAN**

**European Implementation Network
January 2021**



The European Implementation Network works with NGOs and others across Europe to make sure that judgments of the European Court of Human Rights are fully implemented, and thus capable to provide real change.

The most successful work on implementation of ECtHR judgments combines advocacy at the national level with engagement with the supervision process at the Committee of Ministers of the Council of Europe.

EIN supports work at both levels through advocacy, training, and resources.

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The statistics in this document are valid as of 27 November 2020. They were drawn on that date from the Council of Europe's implementation database, [HUDOC-EXEC](#)

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FOREWORD

Judgments of the European Court of Human Rights are rightly celebrated for bringing justice to victims of human rights violations. However, they are only a first step towards human rights protections. Unfortunately, judgments can remain pending implementation for very long periods. This can mean that the human rights violations continue to happen. EIN aims to highlight examples of this, by assessing the implementation record of Council of Europe states. In doing so, we hope to raise awareness and incentivize governments and civil society to play an active role in the implementation of judgments of the European Court of Human Rights.



This report examines the implementation record of Azerbaijan, which is in great need of improvement. At the moment, 43 leading judgments are still pending implementation. Each of these represents a systemic and recurring human rights problem that has not yet been effectively addressed. Furthermore, the average time that leading cases have been pending is over 7 years (for the statistics and our analysis, see pages 6-10).

The figures indicate that the Azerbaijani authorities have a significant problem in engaging in the implementation process. As a result, opportunities to bring domestic legislation, policies and practices into line with European human rights standards are being lost, while human rights violations continue to reoccur. Arbitrary prosecution of human rights defenders, journalists and activists; restrictive legislation governing NGO activities; violation of the right to free and fair elections, and limits on judicial independence are some of the areas in which important reforms are called for.

In other member states of the Council of Europe, we have seen that systematic implementation of judgments of the European Court of Human Rights has been achieved through a stronger collaborative relationship between national authorities and civil society. Giving independent civil society the opportunity to have its' voice heard before decision makers, as well as the necessary legislative environment to operate effectively, can lead to significant progress, turning the judgments of the European Court of Human Rights into human rights protections. We hope that the dissemination of this report will serve as an informative basis for future work on the implementation of judgments in Azerbaijan.

*Professor Başak Çalı,
EIN Chair*

WHY IMPLEMENTATION MATTERS

Mammadli v. Azerbaijan and the crackdown on human rights defenders

Anar Mammadli has founded several NGOs in Azerbaijan. When one of them published a report alleging widespread irregularities in the 2013 presidential elections, he was unjustly prosecuted, placed in pre-trial detention, and sentenced to more than 5 years' imprisonment. His case attracted the concern of civil society and international organisations, who saw the arrest as an example of the arbitrary prosecution of NGO leaders and called for his immediate release. Nevertheless, **Mr Mammadli was still in jail when he filed his application with the ECtHR**, and even when he was awarded the Václav Havel Human Rights Prize. Eventually, his rights were vindicated with a judgment which **highlighted the restrictive legislative environment for the operation of NGOs**, and - considering analogous cases like those of Mammadov and Jafarov - stated that the situation disclosed an **alarming crackdown on human rights defenders**.

Although Mr Mammadli was released from prison, one year after the delivery of the judgment the compensation had not yet been paid, nor the conviction lifted. Faced with the authorities' inaction, the Committee of Ministers issued an interim resolution noting the **"troubling pattern of arbitrary arrest and detention of government critics"**. In further submissions, Mr Mammadli informed the CM that the compensation had been paid, **but his conviction "still stands" and prevents him from resuming his political activities**.



The convention system has the power to make a real difference to people's lives and to help bring about positive changes across the Continent

(Secretary General of the Council of Europe, 4 September 2020, DC 106 (2020))



Hikmat Gafarzada via Unsplash.com

In April 2020, the Supreme Court quashed the convictions of two victims of unjust political persecution who were in a similar position to Mr Mammadli: Ilgar Mammadov and Rasul Jafarov. They were also compensated for their unlawful arrest and imprisonment. However, there has been no justice for Mr Mammadli and over a dozen other individuals identified by the European Court as victims of political prosecution.

As recalled in the submissions of a group of NGOs, the **"systemic reprisals and political persecution of peaceful dissent"** by means of the "hindering of legitimate activities of independent NGOs critical of the government" is so serious that **"even when victims of politically motivated prosecutions are released they are left with criminal records"** preventing them to carry out their activities, access their bank accounts, stand for elections, or travel abroad. The authorities denied these allegations, invoking the Covid-19 pandemic and the state of war as reasons for having been unable to quash the conviction, while referring back to the general measures envisaged in the action plan of 2019, which contains undertakings aimed at strengthening judicial independence. In the latest decision of the Committee of Ministers, the CM expressed **"deep concern" for failures to "ensure that individual measures are taken without further delay"**.

HOW IMPLEMENTATION WORKS

The Mammadli group of cases can be taken as an example of the concerted efforts of local and international NGOs, together with the CoE and other international organisations, in addressing a pressing human rights issue in spite of the inaction authorities.

The Judgment of the ECtHR

With the judgment of 19 April 2015, the ECtHR found multiple **violations of Article 5** on account of the unlawful pre-trial detention suffered by Mr Mammadli, and a **violation of Article 18** for the “**troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law**”. NGOs and the CoE commissioner for human rights filed third party interventions in the case.

The involvement of the CoE and other International Organisations

In 2011 and in 2014, the **Venice commission** issued two opinions holding that Azerbaijani legislation on NGOs excessively restricts the operation of civil society and does not comply with European standards. Moreover, after the applicant’s arrest, the **CoE Parliamentary Assembly** delivered a declaration calling for his immediate release. These calls have been shared by the UN High Commissioner for Human Rights and by the European Parliament in several resolutions condemning the growing intimidation, repression and prosecution of human rights defenders.

The Role of Local NGOs

NGOs immediately denounced the applicant's arrest as a reprisal. After the delivery of the ECtHR judgment, EMDS filed Rule 9.2 submissions with the CM that were soon joined by a coalition of international and local NGOs expressing their concerns vis-à-vis the “**widespread use of criminal law and restrictive NGO legislation as a weapon against critical voices**”, and pointing out that “**since the beginning of the pandemic, the government has continued a crackdown on dissenting voices**” by arresting “**more than 100 opposition leaders, supporters, and activists**”. These views were raised in a briefing with the representatives of the CM in May 2019.

The measures enacted by the Government

Mr Mammadli has been released from detention and paid the compensation awarded to him in the judgment of the ECtHR. However, unlike two other victims of similar violations, his unjust conviction has not yet been quashed. The authorities pledged to take the necessary measures **as soon as the confinement measures ordered to reduce the spread of Covid-19, and the state of war, would be over**.

The supervision process before the Committee of Ministers

With an interim resolution the CM “urged the authorities to ensure that all the necessary individual measures are taken without any further delay”. Faced with the authorities’ inaction the CM reiterated these requests in its latest decision and **decided to continue examining this group of cases at each meetings until all the applicants’ convictions are quashed**.

EVALUATING THE IMPLEMENTATION PROCESS

Key Figures (1)

Number of leading judgments pending implementation

43

As of October 2020, there are 43 leading ECtHR judgments against Azerbaijan still pending implementation. This means that the **human rights problems identified by the judgments have not been resolved**, and are therefore likely to recur.

Average time leading cases have been pending

7 years
2 months

The backlog of pending leading cases is due to the **considerable amount of time needed on average to close each leading judgment**, which is one of the highest in the region and causes overload in the implementation process.

Leading judgments are those that identify a **new significant or systemic problem** in a country. Each leading judgment therefore represents a human rights issue that needs to be resolved via the implementation process.

Assessing the **proportion of leading judgments being implemented** is useful to assess whether a country is carrying out general reforms to put into effect judgments from the European Court of Human Rights.

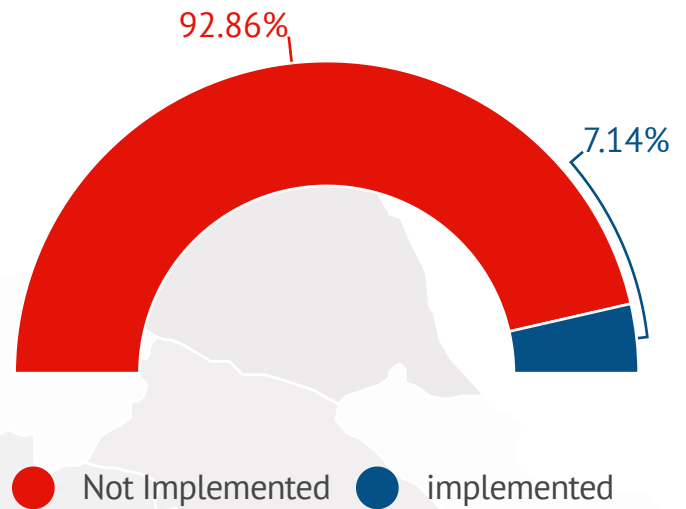
It is also necessary to look at the **overall number of leading cases pending**. The countries with the most serious non-implementation problem have both a high proportion of leading cases still pending **and** a high overall number of pending leading cases.

EVALUATING THE IMPLEMENTATION PROCESS

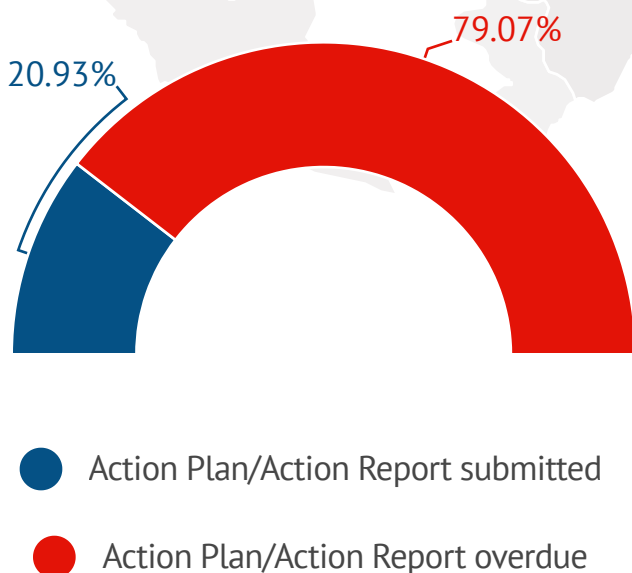
Key Figures (2)

Only **2 out of 28** leading judgments rendered against Azerbaijan in the past 10 years have been implemented. This means that **more than nine out of ten** of the judgments recently issued by the ECtHR (and the systemic human rights issues they identify) have not yet been dealt with by the authorities. These figures are all the more notable considering that, in the absence of the **general legislative and/or policy reforms required to resolve problems highlighted by these judgments**, the violations are likely to recur.

Number of leading judgments from the last 10 years still pending



Percentage of leading judgments with overdue Action Plan/Action Report

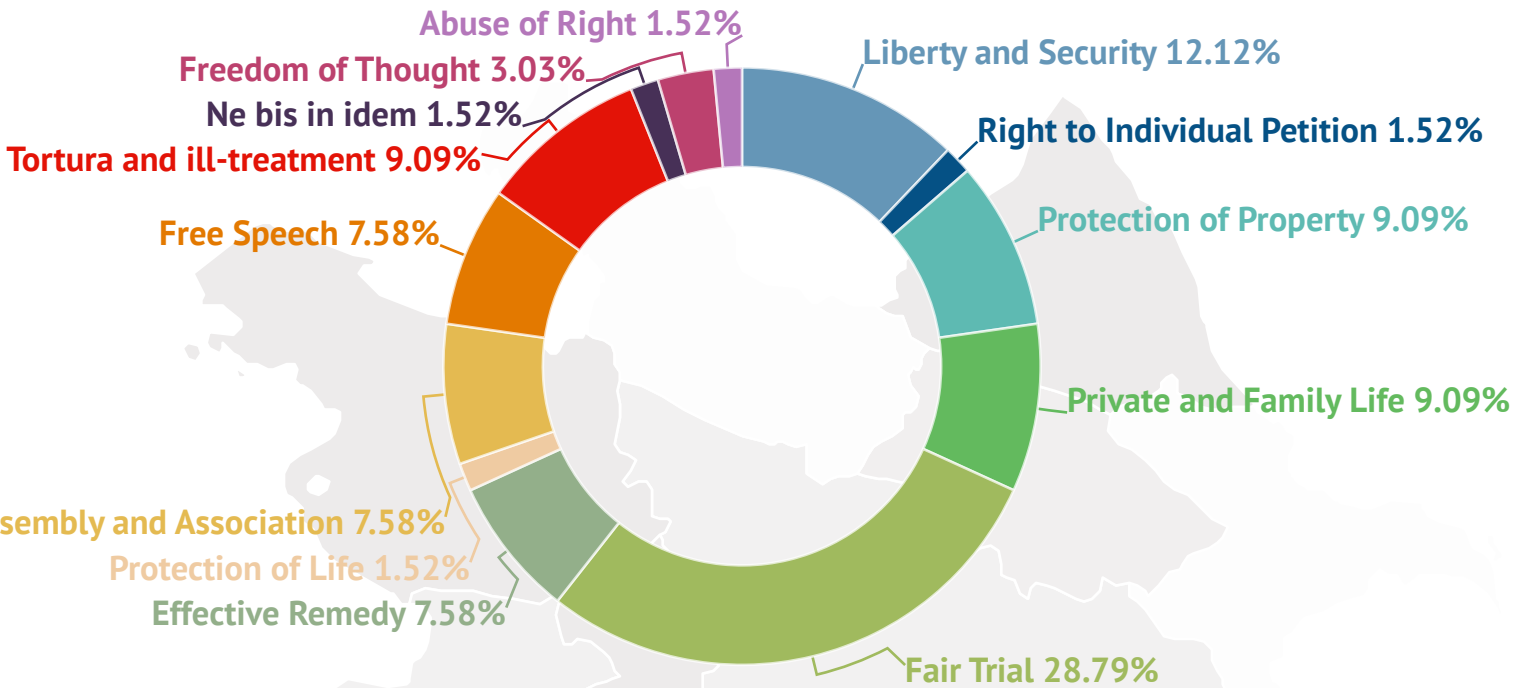


Looking at the pending leading judgments overall, it is worth noting that in almost 8 cases out of 10 the authorities are yet to submit an **Action Plan** (i.e. the document setting out what steps are envisaged in order to implement the judgment) and/or an **Action Report** (i.e. the overview of the measures successfully taken). This is a huge obstacle to implementation, as the lack of an Action Plan and/or Action Report implies government inactivity in relation to the implementation process.


EVALUATING THE IMPLEMENTATION PROCESS


Type of Violation


Besides the percentage of implemented/non-implemented leading judgments, **the nature of the violation(s)** found by the European Court with leading judgments pending implementation is also worth noting.



Recurring Violations

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8 leading judgments pending implementation concern violations of the right to liberty, due to unlawful pre-trial detention. In the *Mammadli Group*, this violation is combined with violations of **Article 18**, where the detention was ordered to punish the applicants for human rights work and to silence them.
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Among the leading judgments pending implementation, there are **6 groups with a violation of the prohibition of torture and inhuman and/or degrading treatment**, due to conditions of detention in prisons and other detention facilities, and/or excessive use of force and torture by police/security forces.
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A number of the findings of a **violation of the right to fair trial (19 in total)** are connected with concerns over a **lack of genuine independence in the judiciary**.

ANALYSIS

The State of ECtHR Implementation (1)

The statistics show that **the state of ECtHR implementation in Azerbaijan is badly in need of improvement**. Of all Council of Europe states, Azerbaijan has the highest proportion of leading cases from the past ten years still pending. It is also important to note that many of the unimplemented judgments indicate **continuing and severe attacks** on the work of civil society as a whole - and **human rights organisations in particular**.

This indicates that the authorities have a real problem with ECtHR implementation and seem to **lack the means or the will to adopt the necessary measures to curb recurring human rights violations**. The same is confirmed by the analysis of specific cases, which show that egregious human rights issues still affect the country many years after the delivery of the relevant judgments by the ECtHR.

The **Election Monitoring and Democracy Studies Center (EMDS)** and the **Baku Human Rights Club** are two non-governmental organisations that carry out extensive work on the issue of non-implementation of EHR judgments in Azerbaijan. We asked them to set out what they perceive to be the reasons behind the absence of systemic ECHR implementation in the country. They responded with the following concerns:

The main obstacle to systematic ECtHR implementation is **resistance at the political level coupled with a strict hierarchical institutional framework and a persisting bureaucratic mentality** among state officers.

The root causes of the problem lie in the **lack of genuine independence of judges, prosecutors and other monitoring state bodies**, and in the ensuing absence of effective remedies at the domestic level to complain of human rights violations.



The practice of undue influence is so entrenched in the system that often state officers do not dare to act independently even when they would have the power to do so

(Anar Mammadli, Chairperson of the Election Monitoring and Democracy Studies Center)

The situation is worsened by the **very restrictive legislative framework under which NGOs are forced to operate**, which makes human rights advocacy highly difficult and risky, when it doesn't preclude it completely.

Against this background, **legislative reforms alone would not prove sufficient to resolve the problem** unless they are accompanied by adequate initiatives to change the approach of the state machinery.

ANALYSIS

The State of ECtHR Implementation (2)

Azerbaijani NGOs also provided the following ideas as recommendations to improve the country's record on ECtHR implementation:

Any improvement of the country's human rights record is conditional upon an all-embracing **reform of the judiciary** (including the process of selection and appointment of judges, the principle of irremovability, and their remuneration) **aimed at ensuring judicial independence and proper expertise.**

European integration would also be key to ECtHR implementation, as **CoE and EU institutions are capable to exert international pressure on the authorities in order to prompt the adoption of the necessary reforms** to bring domestic legislation into line with human rights standards. In addition to this, **a gradual opening to international trade and free movement of goods, services, capital and persons** will hopefully foster the principles of accountability, transparency, and democracy.

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To overcome this difficult situation we need a new generation of human rights defenders in civil society organisations as well as in state institutions

(Rasul Jafarov, Founder of the Baku Human Rights Club)

Given the constraints under which it has to operate, **advocacy at the national level needs the support of European civil society, human rights organisations, and international institutions** via capacity building initiatives, funding programmes, and grants.

Best practices should be drawn from the experience of other states with a similar background. In this regard, **the importance of the contribution of human rights experts from foreign countries and from international institutions and/or organisation** cannot be overestimated.

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It is impossible to foresee any improvement without the establishment of truly independent media and the provision of adequate protection for journalists and human rights activists

(Anar Mammadli, Chairperson of the Election Monitoring and Democracy Studies Center)

The **National Commissioner for Human Rights** should be involved systematically in ECtHR implementation. Moreover, a **parliamentary committee specifically dealing with implementation** should be established and opened to the input of civil society.

CASE STUDY (1)

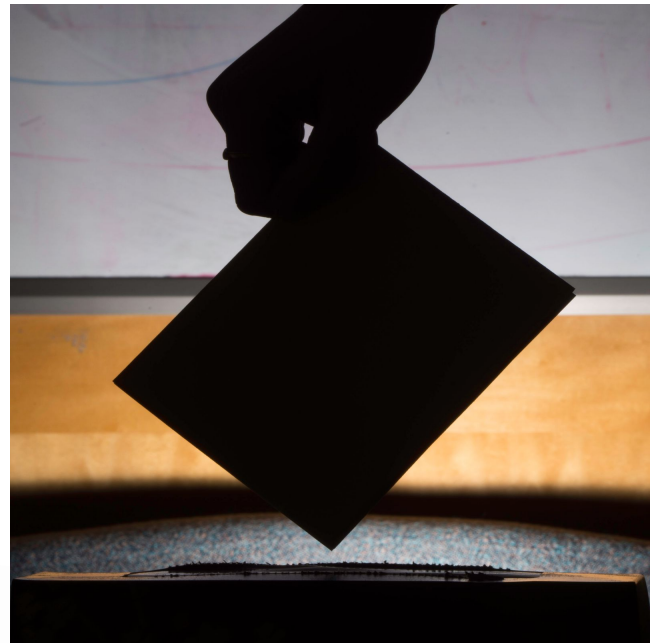
The right to free and fair elections

Namat Aliyev is an opposition politician who ran in the 2005 parliamentary elections and denounced several irregularities in the poll. He appealed to the Constituency Electoral Commission, claiming that **the vote had been rigged by means of illegal intervention and ballot stuffing**, but his appeal was rejected with a decision that was confirmed by the Central Electoral Commission and later by the Court of Appeal and the Supreme Court. Mr Aliyev then turned to the European Court of Human Rights, complaining of numerous breaches of electoral law and of the domestic authorities' failure to duly address them. In sum, he argued, the elections had not been free and the authorities covered up the irregularities. The ECtHR ruled in his favour, finding that **the domestic authorities that had dealt with the applicant's complaint had relied on an overly formalistic approach in order to avoid examining the substance of his arguable (and indeed very serious) allegations**, thus failing to make a genuine effort to protect his right to stand for elections.

However, Mr Aliyev's case is by no means unique. The ECtHR received dozens of similar applications, and the case was included in a **group of another 22 cases concerning violations of Article 3 of Protocol No. 1 to the Convention during the 2005 and 2010 parliamentary elections**. In the course of the implementation process, Azerbaijan paid the just satisfaction awarded by the Court in all cases except 4. However, in spite of numerous decisions from the Committee of Ministers, general measures are still awaited.



In the present case ... the conduct of the electoral commissions and courts and their respective decisions revealed an appearance of lack of any genuine concern for the protection of the applicant's right to stand for election
(Namat Aliyev v Azerbaijan, 8 April 2010, § 90)



Michael_Swan via Flickr.com

In several action plans and communications, the authorities informed the Council of Europe of the 2008 amendments to the Election Code and of the 2014 reform of the legislative framework “On Courts and Judges”. However, as identified in two communications by EMDS, **the structural problems affecting the way in which election commissions and courts deal with electoral rights still remain**, as the authorities failed to tackle their root causes, such as a **lack of genuine independence in the judiciary and other state bodies**.

The CM has been relying on these arguments in the most recent decisions, which express regret for the **absence of fundamental change to the legal framework before the 2020 parliamentary elections**.

Indeed, OSCE and PACE reports on the 2020 and the 2018 elections state that **election commissions handled complaints in an inconsistent manner**, thus failing to restore electoral rights, and ultimately undermining electoral integrity and public confidence in the democratic process.

The implementation of this group of cases will be of crucial importance to the future of democracy in Azerbaijan.

CASE STUDY (2)

The fight for the protection of journalists

Khadija Ismayilova is a journalist who published investigative pieces exposing state corruption up to the former President of Azerbaijan and his family. This made her the constant target of harassment, threats, smear campaigns, and abusive prosecution. In March 2012, she started receiving threatening letters with intimate pictures of her and her boyfriend. Shortly afterwards, two videos of the same kind were disseminated on the internet. It soon became clear that **the videos were taken with hidden cameras inside her apartment**. However, rather than carrying out an investigation into her complaints, **the prosecuting authorities further violated Ms Ismayilova's privacy by issuing a report disclosing the identity and contact details of her boyfriend, friends and family, while state-controlled newspapers began running stories on her alleged immoral behaviour and sexual life**. Eventually, **Ms Ismayilova was also detained on fabricated charges**.

Ms Ismayilova filed a complaint against the prosecuting authorities, sued the newspapers, and fought the criminal charges up to the Supreme Court. When all the domestic remedies proved futile, Ms Ismayilova filed three applications with the European Court. Many NGOs participated in these cases filing submissions which were substantially upheld by the ECtHR. The European Court ruled that **the situation of freedom of expression in Azerbaijan has been a long-standing concern**, and found multiple violations of Articles 8 and 10 in two consecutive judgments.

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the acts complained of were ... an affront to human dignity ... the applicant is a well-known journalist and there was a plausible link between her professional activity and the aforementioned intrusions, whose purpose was to silence her.

(Ismayilova v. Azerbaijan, 10 January 2019, § 116).



Tobias Tullius via Unsplash.com

With another judgment the ECtHR established that Ms Ismayilova's pre-trial detention violated her right to liberty, that her right to be presumed innocent was breached, and that the purpose of her arrest was to silence her.

These judgments were received in positively by defenders of free speech. However, **Ms. Ismayilova is yet to be paid the compensation awarded by the Court**. Moreover, her complaints were never freshly investigated nor her conviction lifted, so that **she is currently under a 5-year travel ban and cannot access her bank accounts**. With a decision of December 2020, the CM criticised the authorities for having yet to submit an action plan, urged them to pay the compensation, and, recalling the Recommendation on the protection of journalists, prompted them to create a favourable environment against threats, attacks, abuse and harassment from state and non-state actors.

In the meantime, Ms Ismayilova was awarded the Right Livelihood Award for **her courage and tenacity in exposing corruption at the highest levels of government**.

NGO ENGAGEMENT

NGOs and NHRIs play a crucial role in the implementation process. Through their **Rule 9 communications** and **informal briefings** they can shed light on the actual state of execution of a given group of cases, and prevent them from being closed too early.

These organisations can be contacted for more information on certain cases.

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EIN partners with NGOs across Council of Europe member states to build legal capacity, give advice (including [on how to write a Rule 9.2 communications](#)), and offer a platform for NGOs in Strasbourg – helping NGOs make a real difference through full participation in the implementation process.

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