UNIVERSITY OF TARTU
SCHOOL OF LAW
Department of Public Law

Khayal Asadzade

IMPLEMENTATION OF THE NORMS REGARDING PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT DURING CRIMINAL PROCEEDINGS IN AZERBAIJAN

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INTRODUCTION

Torture is one of the gravest forms of human rights violations. No surprise that it is considered as one of the absolute rights which cannot be derogated even during the times of emergency. Since the adoption of the UDHR[1], the right to prohibition of torture, inhuman and degrading treatment and punishment has been one of the most protected rights in the international treaties. The ICCPR enshrines this right in Article 7[2], while the ECHR sets it forth in Article 3[3]. A separate UN treaty on torture – the CAT was adopted on 4 February 1985[4]. In accordance with the CAT, a specific committee – the UN CAT was established. Moreover, a similar convention and a committee was adopted and established respectively in Europe as well. In November 1987, the CoE CAT was adopted to strengthen protection provided under Article 3 of the ECHR. This convention set forth the establishment of mechanisms of protection from ill-treatment. The convention established the CoE CPT[5]. These developments clearly show that the right to prohibition of torture has been regarded as one of the principal human rights. It is considered as one of the *jus cogens* norms which have a higher status in the system of international legal norms.

Unfortunately, violations of this right are still present. In some places, the problem is endemic and systematic. In this thesis, I will cover the issues regarding the prohibition of torture in Azerbaijan, a state which is a member of the CoE, and a state-party to the ECHR. It has also signed and ratified the UN CAT along with the OPCAT on establishing mechanisms for prevention of torture and other forms of ill-treatment. It is also member to the CoE CAT.

The first hypothesis of this study is that all forms of ill-treatment, namely torture, inhuman and degrading treatment and punishment are widespread, endemic, and systemic in Azerbaijan, and it usually flows from political motivations. According to reports from international organizations, torture in Azerbaijan usually flows from political issues[6] as well as from the arbitrary actions of some of the law enforcement organs such as police, prosecutor's offices, and intelligence bodies. According to the same reports, superiority of these organs *vis-à-vis* judicial bodies, such as the

[1] United Nations Universal Declaration on Human Rights, Paris 10.12.1948, Article 5.
[2] International Covenant on Civil and Political Rights, New York City 16.12.1966, e.i.f. 23.03.1976. Article 7.
[3] Convention for the Protection of Human Rights and Fundamental Freedoms, Rome 04.11.1950, e.i.f. 03.09.1953.
[4] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York City 04.02.1985, e.i.f. 26.06.1987, Article 3.
[5] European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Adopted 26.11.1987, e.i.f. 01.02.1989. Article 1.
[6] Committee against Torture, Concluding observations on the fourth periodic report of Azerbaijan. 27 January, 2016. CAT/C/AZE/CO/4, p. 4, § 14.

courts is also a part of the problem. For instance, the UN CAT has expressed its concern over the lack of independence of judicial bodies *vis-à-vis* law enforcement bodies[7]. Usually, authoritative governments use torture as a tool against their political opponents. We can include Azerbaijan into the list of such governments as the country was considered "not free" by Freedom House in its most recent report[8]. In Azerbaijan, torture is mostly inflicted by the law enforcement bodies for extraction of confession, but other purposes for its infliction are widespread. For example, infliction of torture as a mean of reprisal has been carried out in some instances. I will analyse Azerbaijan's ill-treatment-related problems, which have also been flagged up by several international monitoring bodies[9].

These issues also stem from the lack of domestic implementation of international human rights obligations regarding prohibition of torture, inhuman and degrading treatment[10]. Azerbaijan has also recognized the ill-treatment prevention mechanisms in the form of periodic visits under the OPCAT and CoE CAT. It has also recognised individual applications to UN CAT under Article 22 of the CAT. Individual applications can also be submitted from Azerbaijan to the UN HRC under the Optional Protocol to the ICCPR and to the ECtHR under the ECHR.

Although the victims of the violations in Azerbaijan possess the right to appeal to the regional or international courts and other bodies, once the judgments or views are issued, there is no effective implementation system that could impose legally binding obligations on the state which neglects implementing these judgments. It is important to note that the UN CAT's judgments are not legally binding in contrast with the judgments of the ECtHR which are obligatory to implement. However, problems persist regarding implementation of both regional and international instruments regarding torture, inhuman or degrading treatment. The recommendations issued by the international organizations usually concern these problems. Despite Azerbaijan has signed and ratified significant international instruments for prohibition of torture and other forms of ill-treatment, the implementation of the norms has significant deficiencies. These deficiencies are also reflected in the reports and case law of the international

[7] *Ibid.*
[8] Freedom House. Freedom in the World 2021. Democracy under siege. p. 18-19.
[9] See e.g. Committee Against Torture. Consideration of reports submitted by states parties under the Article 19 of the Convention. Conclusions and recommendations of the Committee against Torture. Azerbaijan., Thirtieth session, 28 April – 16 May 2003. p. 3-4; Committee against Torture, concluding observations 2016, *op. cit.* p. 2-7.; Committee against Torture. Consideration of reports submitted by States parties under article 19 of the Convention. Concluding observations of the Committee against Torture. Forty-third session, Geneva, 2–20 November 2009. CAT/C/AZE/CO/3, p. 3-8.
[10] See Council of Europe. Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 23 to 30 October 2017. CPT/Inf (2018) 37.

monitoring bodies and courts, including the ECtHR. There is a specific General Comment issued by UN CAT which deals with the issues related to implementation of the Article 2 of the UN CAT. For instance, it prescribes the prevention of torture through legislative, executive, and judicial means[11], elimination of any legal or other obstacles that impede the eradication of torture and ill-treatment[12], take positive effective measures aimed at effective prevention of such practices[13]. State-parties also have the obligation of continually keeping the national laws and performance under the CAT in compliance with the UN CAT's concluding observations and views adopted on individual communications[14]. However, the Government of Azerbaijan still uses torture as the way of extraction of information, reprisal against political dissent and other purposes[15]. The goal of this thesis is to identify areas of non-compliance with international standards on prohibition of torture, inhuman or degrading treatment in Azerbaijan and provide some recommendations for improvement of both law and practice.

It is noteworthy that the legal assistance in Azerbaijan is not effective. The second hypothesis of this research is that one of the reasons of widespread torture cases in Azerbaijan is the unavailability of the free and effective legal assistance. Not to mention that international organizations (or their subordinate organizations) such as CoE CAT have mentioned this issue several times in relation to Azerbaijan[16]. Solving the problems in this sphere could improve the situation and diminish the chances of detained, arrested, or convicted people getting tortured. Everyone has the right to effective legal assistance through a lawyer of his or her own choosing or appointed by a state if the person does not have sufficient means of pay[17]. This right can be exercised at any stage of the criminal proceedings. In fact, the person has the right to legal assistance from the moment of arrest.

Despite the existence of imperative norms in the international documents, the state usually neglects them, although it has adopted the national laws on the prohibition of torture in accordance with those international documents. Even the UN CAT expressed its appreciation of the several national laws adopted in relation to the betterment of the situation regarding torture in Azerbaijan, specifically citing the law on the rights and freedoms of persons held in detention

[11] United Nations Committee Against Torture. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. General Comment № 2. 24 January, 2008. CAT/C/GC/2. p. 1. § 2.
[12] *ibid*. p. 2, § 4.
[13] *ibid*.
[14] *ibid*.
[15] Committee against Torture, concluding observations 2016, *op. cit.* p. 5. § 18. p. 3. § 10.
[16] See e.g. Committee Against Torture. List of issues prior to submission of the fifth periodic report of Azerbaijan. 19 June, 2018. CAT/C/AZE/QPR/5.
[17] 1950 Convention, *op. cit.*, Article 6.

facilities and the act and the rules on providing medical and psychological care to detained or arrested persons and on detaining persons in medical establishments in its concluding observations on the fourth periodic report on Azerbaijan in 2015[18].

In most cases, the details of instances of torture and other forms of ill-treatment also expose the inefficient work of the organs that are supposed to have supervisory role over law enforcing bodies, such as the Human Rights Commissioner (more commonly known as Ombudsman), as well as the higher authoritative bodies such as prosecutor's offices and courts. The third hypothesis of this study is that in countries such as Azerbaijan this could be linked to the problem of independence of judicial and human rights monitoring organs. These organs are not independent. Moreover, they lack compliance with the international standards. I will briefly touch the work of NPM and the National Preventive Group that has been established in accordance with the NPM. It is noteworthy that the NPM functions under the auspices of the Ombudsman[19]. UN CAT has welcomed its establishment while noting its ineffective work regarding the prevention of torture in the places of detention relying on several reports[20].

In the research paper, I will do a case study by encapsulating the main country-specific issues found in the judgments of the ECtHR issued against Azerbaijan. It is indispensable to look into the cases from Azerbaijan in order to establish the specific systematic, reoccurring issues regarding torture in the legal system of the Republic of Azerbaijan as well as trends in its legal framework and practice. Moreover, I will consider the reports issued by UN CAT and CoE CPT to give a general view on the situation regarding the implementation of provisions regarding to prohibition of ill-treatment and prove the hypotheses that I have put forward in this thesis.

This research will mostly be focused around the ECHR practice of Azerbaijan in respect of the case study. The reason for this choice is the legally binding nature of this treaty. Another reason is that Azerbaijan has had a substantial number of cases in the ECtHR, the judicial body that implements the ECHR. By contrast, the UN CAT's decisions are not legally binding. There are also only a handful of cases related to Azerbaijani nationals at the UN CAT which I will briefly cover later. By contrast, as of March 2021, there have been 32 cases of violation of the prohibition of torture against Azerbaijan at the ECtHR. Altogether there have been 51 applications to the Court. These applications have been submitted by 50 applicants. On the other

[18] Committee against Torture, concluding observations 2016, *op. cit.* p. 1 § 4.
[19] The Law No. 163-IVKD on the amendments to the Constitutional Law "On the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan". Adopted 24.06.2011, e.i.f. 10.08.2011.
[20] Committee against Torture, concluding observations 2016, *op. cit.* p. 5, § 22.

hand, I will consider the recommendations of both CoE CPT and UN CAT while establishing the most pressing domestic administrative practice issues. The reason of this choice is the comprehensive analysis of the situation regarding the prohibition of torture in Azerbaijan rendered by these bodies.

In this thesis, I primarily use analytical method to cases, observations, and recommendations regarding the prohibition of torture against the Republic of Azerbaijan, and the synthesis method.

For achieving my research goals, I will seek answers to following questions:

1) What are the main reasons of the inefficiencies of internal supervisory and higher authoritative bodies?

2) Which institutions should be established inside of Azerbaijan in order to prevent the violation of the right to prohibition of torture, inhuman and degrading treatment?

3) What should be done in order to improve the work of the institutions who deal with the torture, inhuman and degrading treatment complaints?

4) What are the specific features of the violations of the international norms regarding torture in the Republic of Azerbaijan?

Since independence of Azerbaijan, there has not been any academic research on the ill-treatment. There are reports of bodies of international organizations such as UN CAT and CoE CPT and those of local and international NGOs such as IPD or Freedom House which are dedicated to the issues related to prohibition of torture in Azerbaijan that have pointed out deficiencies in law and practice of this country. This research contributes to the more systematic and comprehensive academic analysis of the issues related to deficiencies in implementation of prohibition of torture in Azerbaijan and offers possible solutions of the problems pointed out by international monitoring bodies.

In the first chapter, the theoretical meaning of ill-treatment and its components are covered alongside with the factors that differentiate them. In that respect, practices of both CAT and ECHR are important to explain the definitions of torture and other forms of ill-treatment. The second chapter includes detailed analysis of cases against Azerbaijan at ECtHR and UN CAT

where violations of the prohibition of ill-treatment were found. In the last chapter, I analyse the domestic cases and administrative practice in the light of international law while citing the specific issues mentioned by UN CAT, CoE CPT, and ECtHR in their respective reports and cases.

Keywords: prohibition, torture, case law, access to justice, political persecutions.

CHAPTER I. CONCEPTION OF "ILL-TREATMENT" AND ITS PERCEPTION IN AZERBAIJAN

1.1. Definition of Torture, Inhuman and Degrading Treatment and Punishment in International Law

The prohibition of torture is one of the most essential and protected rights in the system of human rights. It has an absolute nature, which means it cannot be neglected even during the time of emergency, for instance, the ones prescribed in the Article 15 of the ECHR such as war. In addition to this, unlike most of the rights and freedoms constituted in the ECHR, the prohibition of torture does not entail any exceptions from the general rule. It is in fact, one of the shortest provisions prescribed by the ECHR consisting of just fifteen words. Therefore, the requirement of the ECHR is clear and simple: no one should be subject to torture or inhumane and degrading treatment.

As I cited before, the Article 3 of the ECHR entails an absolute right. It accomplishes this in two methods: firstly, it cannot be derogated even during wartime (i.e. martial law) or public emergency (i.e. curfew) and secondly, it is constituted on non-negotiable terms, that is to say, it cannot be derogated even in the name of the most valuable social interests[21]. For instance, no one can be subjected to torture with the aim of combatting terrorism[22] or organized criminal activity[23] or even with the aim of saving someone's life[24]. All these requirements are also applicable in the cases concerning inhuman and degrading treatment or punishment[25].

In fact, the Article 3 of the ECHR encapsulates five terms which constitute the base of one of the most protected and essential rights in the human rights protection system. These are the following terms:

1) torture;
2) inhuman;
3) degrading;
4) treatment;

[21] Harris D., O'Boyle M., Warbrick C. *Pravo Yevropeyskoy Konventsii po Pravam Cheloveka* [Law of the European Convention on Human Rights]. Scientific edition, second edition, addendum. "Razvitie Pravovikh Sistem" publishing house. Moscow, 2018. p. 311-312.
[22] ECtHR 12850/87, Tomasi v. France, § 115.
[23] See ECtHR 25803/94 Selmouni v. France.
[24] See ECtHR 22978/05 Gäfgen v. Germany.
[25] United Nations Committee Against Torture General Comment № 2 2008. *op. cit.* p. 2. § 5.

5) punishment.

But the main question is this: what do these terms actually entail? The first and most widely used term is "torture". There are several interpretations of this term. For instance, Article 1 of the CAT prescribes:

> "[...]the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."[26]

Therefore, under the CAT, torture is a physical or mental pain inflicted either directly by the governmental officials or by other people with the consent of these officials in order to extract information or confession, as an act of reprisal or an intimidation. CAT is the only convention that provides details on the definition of "torture" which is embedded inside of the umbrella term of "ill-treatment". It distinguishes torture from other forms of ill-treatment by citing its specific features. It does not, however, give a definition to inhuman and degrading treatment.

As the "ill-treatment" entails three distinct definitions, it would be crucial to distinguish them by establishing their respective definitions. These are torture, inhuman treatment, and degrading treatment. The ECtHR has already acknowledged that the torture is distinguished with the severity and the intensity of the inflicted pain and distress. In other words, an act of ill-treatment must attain a minimum level of severity for it to fall under the conception of torture. In law, it is called *de minimis* rule[27].

According to this rule, the minimum level of severity could be measured by different criteria: it depends on all the circumstances of a particular case, for example, the duration of the ill-treatment, the conditions of the ill-treatment, even the age, sex and the health condition of the

[26] The 1985 Convention Against Torture. *op. cit.* Article 1.
[27] Reidy. A. The prohibition of torture. A guide to the implementation of Article 3 of the European Convention on Human Rights. Human rights handbooks, No. 6. Printed in Germany. July 2003. p. 10.

victim. The ECtHR stated this rule in its Ireland v. the United Kingdom case[28]. However, it is also important to note that the Court did not hold the violation of the Article 3 citing that the so called "five techniques" did not constitute torture, although the European Commission of Human Rights which was functioning at the time unanimously held that the so-called "disorientation" or "sensory deprivation" techniques ("five techniques") constituted torture. However, the Court emphasized that the "five techniques" did not constitute torture as they lacked the particular intensity and cruelty that torture acts usually possess. Instead, the Court classified the infliction of "five techniques" as an act of "inhuman treatment". Those five techniques included: 1) wall-standing; 2) hooding (putting a bag over detainees' heads and keeping it there except during the interrogations); 3) subjection to noise; 4) deprivation of sleep; 5) deprivation of food and drink[29].

In reality, such circumstances are indeed crucial factors in determining whether a particular treatment equals to torture or inhuman and degrading treatment or not. For instance, making someone stand on his feet for an hour would make little damage to him if he or she has normal feet, whereas for people with flat feet standing even for some minutes would be painful and difficult to bear. Likewise, keeping a juvenile in a cold environment would make more damage to that individual than keeping a healthy adult person under such conditions. Therefore, these factors should be taken into consideration while issuing a judgment on the merits.

In different societies and places, some acts of violence are usually neglected and not taken into consideration as the acts of torture or inhuman and degrading treatment. For instance, in the Greek case, the European Commission of Human Rights stated that according to the testimonies submitted by some of the witnesses, most of the detainees tolerated the roughness of the treatment by police and the military personnel and some even took it for granted[30]. Therefore, in different societies and social groups the perception of torture or inhuman and degrading treatment might be different. Although this does not change the universal perception of ill-treatment, in national laws there might be some exceptions. Similarly, countries with such social perceptions may make reservations to conventions prescribing prohibition of ill-treatment thus generating problems in their implementation.

[28] ECtHR 5310/71, Ireland v. the United Kingdom, § 162.
[29] *ibid*. § 96, 167, and 168.
[30] See European Commission of Human Rights. The Greek Case: Report of the Commission: Application No. 3321/67-Denmark v. Greece, Application No. 3322/67-Norway v. Greece, Application No. 3323/67-Sweden v. Greece, Application No. 3344/67-Netherlands v. Greece. Strasbourg: The Commission, 1970.

The Article 1 of the Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on December 9, 1975 gives another definition to torture:

"Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."[31]

According to this definition, torture is just a more severe form of inhuman and degrading treatment or punishment. The severity of torture is a character that distinguishes it from the other forms of ill-treatment.

If we clearly analyse the articles related to prohibition of torture enshrined in the aforementioned conventions, we can see the distinguishing of the term of "torture" from "inhuman and degrading treatment". The main criterion is the specific aim. In other words, the ill-treatment is considered an act of torture not only if it is intense, severe, and continuous, but also if it seeks a specific aim, such as extraction of information or confession, reprisal or intimidation. ICCPR also enshrines the prohibition of ill-treatment in its Article 7. According to the UN General Comment No. 20 dedicated to Article 7, it is unnecessary to draw specific distinctions between the forms of ill-treatment for the distinctions depend on the nature, purpose and severity of the treatment applied[32]. However, I believe, it is important to distinct these definitions to better understand what kind of acts fall under which term. It is important, because, torture is considered a more severe act of ill-treatment and its finding by international courts and other organizations would hurt the reputation of a particular state. For instance, the reputation of Azerbaijan has been severely hurt by the allegations of ill-treatment[33].

In the handbook on the article 3 of the ECtHR, the authors gave three essential elements which constitute torture:
1) the infliction of severe mental or physical pain or suffering;
2) the intentional or deliberate infliction of the pain;
3) the pursuit of a specific purpose, such as gaining information, punishment or intimidation[34].

[31] United Nations General Assembly. Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted on 09.12.1975. Article 1.2.
[32] Office of the High Commissioner for Human Rights. CCPR General Comment No. 20: Article 7. Adopted at the Forty-fourth Session of the Human Rights Committee, on 10.03.1992. § 4.
[33] See e.g. prezidentaz. *Ilham Eliyev "BBC News"a musahibe verib* [Ilham Aliyev gave an interview to "BBC News"]. 09.11.2020, accessible at: https://www.youtube.com/watch?v=2PGglaryXjI&t=1216s.
[34] Reidy. *op. cit.*, p. 12.

However, I personally disagree with the idea that the pursuit of an aim actually is a factor differentiating torture from the inhuman and degrading treatment. In my opinion, inhuman and degrading treatment can themselves entail an aim. An inhuman act of treatment might aim to punish someone for things he has done. For instance, a police officer can hit the detainee several times with a slap to the face as a mean of reprisal or punishment for killing a fellow police officer. Such acts might be committed with several other types of goals. For instance, a slap might have an aim of intimidating a person, as if a much more severe type of treatment might be coming provided that person does not confess beforehand. It is, however, true that unlike torture, inhuman treatment should not necessarily possess a purpose, but it can. Therefore, my main conclusion is that an existence of a purpose should not be a factor distinguishing torture from inhuman and degrading treatment as the latter ones also can possess an aim. Torture, on the other hand should always entail a purpose. More severe types of treatment and punishment are always aimed at something. However, given that inhuman treatment can also sometimes entail an aim, purposiveness should not be considered as a distinctive feature of torture. Moreover, degrading treatment is also purposeful for it is aimed at humiliating and debasing a person. Lastly, torture always has specific purposes which are intimidation, extraction of confessions, or punishment, whereas inhuman treatment does not have a specific list of purposes.

The ECtHR has held in its case of Denizci and others v. Cyprus that if there is no specific purpose, infliction of pain cannot be considered a torture. In this case, a group of Turkish Cypriots had been held in custody in one of the detention facilities in Cyprus before returning to the territory of the Northern Cyprus which is controlled by Turkish Forces. The ECtHR held that despite the applicants were subjected to pain and distress it did not constitute a torture as the infliction of pain did not pursue any specific goals such as extraction of information. Moreover, the Court held that the applicant failed to prove the existence of long-term consequences caused by the ill-treatment inflicted by the Cypriot police[35].

The ECtHR has broadened its comprehension of the term "ill-treatment" recently. In its judgment regarding the case Bouyid v. Belgium, the Court stated: "any recourse to physical force which had not been made strictly necessary by the person's own conduct diminished human dignity and was in principle an infringement of the right set forth in Article 3"[36]. From the meaning of the Court's opinion it is understandable that any physical force inflicted by the government officers incompatible with the real behaviour of the applicant (for instance, if he or

[35] ECtHR 25316-25321/94 and 27207/95, Denizci and others v. Cyrpus. § 384-385.
[36] ECtHR 23380/09, Bouyid v. Belgium, § 56.

she heavily resists the lawful orders of the government officials while in police custody or in prison, the officials have the right to inflict physical force) is a violation of the Article 3 of the Convention. It can constitute any form of ill-treatment. A mere slap is enough to diminish the dignity of a human being and thus, violates the Article 3 of the Convention[37].

In the case of Selmouni v. France, the Court noted that the acts of ill-treatment which were considered "inhuman and degrading treatment" before, could obtain another classification in the future[38]. The Court substantiated its view on the fact that the Convention is a "living instrument which must be interpreted in the light of present-day conditions". As the standard of the protection of human rights and fundamental liberties increases, a firmer protection is needed to protect these highest values of democratic societies[39].

Another important issue regarding the difference between torture and inhuman and degrading treatment is the intensity of the inflicted ill-treatment. Severity can be measured by several factors:
- the duration of the ill-treatment;
- physical and mental effects;
- the sex, age and state of health of the victim;
- the manner and the method of its execution[40].

These factors were also examined by the Court in the case of Dikme v. Turkey. The Court held the violation of Article 3 by citing the applicant's state of being in permanent fear and anxiety about his fate and the repeated blows inflicted on him while being held in police custody[41]. In the aforementioned case of Selmouni v. France, the Court noted one general rule regarding all cases concerning torture: if the committed acts objectively inflict severe pain, physical or mental suffering, it should be classified as torture regardless of the victim's sex, age, physical or mental condition. The Court noted that the treatment inflicted in that case was not only violent but would be heinous and humiliating for anyone, irrespective of their condition[42].

The term of "inhuman treatment" is another element of the Article 3 of the ECHR. In the aforementioned Greek case, the now-defunct European Commission on Human Rights stated

[37] *ibid*. § 111.
[38] Selmouni case , *op. cit.,* § 101.
[39] *ibid*.
[40] Reidy, *op. cit.*, p. 12.
[41] ECtHR 20869/92, Dikme v. Turkey. § 95.
[42] Selmouni case, *op. cit.,* § 103.

that the notion of inhuman treatment covers at least such treatment that deliberately causes severe suffering, mental or physical, which in the particular situation is unjustifiable.[43]

As it is visible from the Commission's assessment, the inhuman treatment should lack intensity in order to be considered as such, although it mentions the word "severe" here which is also one of the conditions of torture. However, the Court in its judgment regarding the case of Labita v. Italy has stated:

> "Treatment has been held by the Court to be "inhuman" because [...] it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering […]"[44]

Here, the Court mentions the element of "intensity" for the cases concerning inhuman treatment, although this is one of the factors distinguishing torture from inhuman and degrading treatment. It is, however, noteworthy that the main factor distinguishing these two phenomena is the serious and cruel suffering. Repeated slap in the face might constitute an intense suffering, although not a cruel one as it is not enough to reach the level of torture which is the worst form of ill-treatment.

If a person is just threatened with torture but the actual torture is not implemented, the Court might recognize it as a form of "inhuman treatment". It has done so in its case of Gäfgen v. Germany[45]. The hypothetical case that I mentioned above regarding slapping a person with the aim of intimidating and warning him of a forthcoming infliction of torture may be considered as a threat for it is done to forewarn a person of torture provided he does not confess.

The Court has also described the keeping of a seriously disabled and ill person in a prison with ordinary conditions a violation of the Article 3 as a form of "inhuman treatment". The applicant had to climb several steps in order to reach the medical facility and get appropriate medical treatment for his illness[46]. The state of health of the victim played a crucial role in determination of severity of the inaction.

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[43] Greek Case, *op. cit.*
[44] ECtHR 26772/95, Labita v. Italy, § 120.
[45] Gäfgen case, *op. cit.*, § 70.
[46] ECtHR 48977/09, Arutyunyan v. Russia, § 81.

Just like torture, degrading treatment has a specific aim which is either humiliating or debasing the victim. However, the Court has ruled that the absence of such an aim does not exclude the violation of Article 3[47]. The degrading treatment should inflict the feelings of fear, anguish, or inferiority which breaks the will of the victim to resist[48] and act against his or her own will or conscience[49].

Lastly, "treatment" entails all actions that fall under the scope of the Article 3. As regards to the term of "punishment", the ECtHR has given 4 legitimate penological grounds which render detention as a form of criminal punishment: punishment, deterrence, public protection, and rehabilitation[50].

There have been some specific acts that were gradually held as torture, inhuman, or degrading treatment or punishment. For instance, in the case of Aksoy v. Turkey, the Court held that the acts of torture could be committed only by a prior premeditation and exertion, or in other words, deliberately. In this case, the Court also recognized the act of "*strappado*" or "Palestinian hanging" as an act of torture. The victim was stripped naked, with his arms tied together behind his back, and suspended by his arms. This led to severe consequences, which included paralysis of both of the applicant's arms. Severity and cruelty of this act led to recognition of "*strappado*" as an act of torture by the Court[51]. However, inhuman treatment can also be committed by a prior premeditation and exertion. ECtHR has cited it in the case of Kudła v. Poland[52].

In the case of Aydin v. Turkey, the Court recognized the act of rape as an act of torture. The Court substantiated its recognition as such: "rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally[53].

[47] ECtHR 6586/03, Brânduşe v. Romania, § 50.
[48] ECtHR 2346/02, Pretty v. the United Kingdom, § 52.
[49] ECtHR 54810/00, Jalloh v. Germany, § 68.
[50] ECtHR 66069/09, 130/10, and 3896/10, Vinter and Others v. the United Kingdom, § 111.
[51] ECtHR 21987/93, Aksoy v. Turkey, § 64.
[52] ECtHR 30210/96, Kudła v. Poland, § 92.
[53] ECtHR 23178/94, Aydin v. Turkey, § 83.

In the case of Ilaşcu and others v. Moldova and Russia, the Court held that a long period of wait for the execution of the death penalty issued against the applicant fell under the scope of Article 3, more precisely, under the term of "torture". Moreover, the conditions that the applicant was kept while awaiting his death sentence to be executed further deteriorated his physical and mental health and inflicted immense suffering. Therefore, such acts must be considered torture[54].

In the case of Nevmerzhitsky v. Ukraine, the Court held that force-feeding someone by inserting a special rubber tube into the oesophagus of that person while restricting his or her movements by applying handcuffs and a mouth-widener equals to an act of torture as the action was perpetrated by government officials forcefully and against the will of the applicant. Moreover, there was not a need for the act of force-feeding of the applicant[55].

In conclusion, none of the aforementioned conventions give a detailed definition of the acts entailed under "ill-treatment" term, except for the CAT. However, that convention itself lacks definitions of inhuman and degrading treatment. As a result of the above observations, I would give the following definitions to each of the terms that constitute "ill-treatment":

Torture – a deliberate, intense, and constant infliction of severe physical and mental pain with the aim of extracting confessions, punishing, or intimidating a person.

Inhuman treatment – a deliberate infliction of severe physical and mental pain which results or could result in bodily injuries, and intense mental suffering.

Degrading treatment – deliberate actions aimed at humiliating and debasing the victim.

1.2. Legal Framework in Azerbaijan.

Azerbaijan has a comprehensive legal basis on the prohibition of torture, but, as mentioned before, implementation of the prohibition is the main problem. Azerbaijan has signed the main conventions on human rights such as the ICCPR and the ECHR. Additionally, it is a party to the CAT and CoE CAT. And lastly, it has signed and ratified the OPCAT which envisages the creation of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading

[54] ECtHR 48787/99, Ilaşcu and others v. Moldova and Russia, § 440.
[55] ECtHR 54825/00, Nevmerzhitsky v. Ukraine, § 97.

Treatment or Punishment of the UN CAT (usually called, the Subcommittee on Prevention). The OPCAT also envisages the creation of national preventive mechanisms[56].

Azerbaijan also has internal laws which deal with issues related to the prohibition of torture. The Constitution of the Republic of Azerbaijan is the highest legal act in the hierarchy of the legal acts in Azerbaijan's legal system according to the first part of Article 148[57].

The Constitution of Azerbaijan entails several norms regarding the values enshrined in Article 3 of the ECHR, along with the values protected by other international treaties concerning the prohibition of torture. For instance, the first paragraph of the very first article in the chapter dedicated to human rights and fundamental freedoms in the Constitution emphasizes protection of and respect to human dignity[58].

Article 46 of the Constitution can be considered as an equivalent to Article 3 of the ECHR, as well as to Article 7 of the ICCPR as it sets forth the prohibition of torture, along with the inhuman and degrading treatment. Article 46 of the Constitution is worded as following:

> "**Article 46. Right to protect honour and dignity**
>
> I. Everyone has the right to protect his/her honour and dignity.
> II. Dignity of a person shall be protected by the state. No circumstances can justify the humiliation of the dignity of a person.
> III. No one may be subject to torture. No one may be subject to degrading treatment or punishment. Medical, scientific and other experiments may not be carried out on any person without his/her consent."[59]

As one would see from the meaning of this article, the right to prohibition of torture, inhuman and degrading treatment or punishment has been established as an absolute right which cannot be derogated in any circumstances, as also set forth in the ECHR and in the ICCPR.

[56] Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted 18.12.2002, e.i.f. 22.06.2006. Article 3.
[57] Constitution of the Republic of Azerbaijan. Adopted 12.11.1995, e.i.f. 27.11.1995.
[58] *ibid*. Article 24, Paragraph I.
[59] *ibid*. Article 46.

Moreover, this article entails all five aforementioned elements: torture, inhuman, degrading, treatment, and punishment. The only distinctive element is the mentioning of honour which is absent in the international documents. According to Asgarov, honour is the value given to an individual, whereas dignity is the value that an individual gives to himself[60].

In addition to the Constitution the prohibition against torture, inhuman or degrading treatment or punishment is also enshrined in the Criminal Code. Its Article 293 envisages punishments in forms of fine, deprivation of the right to hold certain posts or to be engaged in certain activities, and imprisonment (up to 11 years depending on the severity of the results of the crime) for the infliction of torture, inhuman or degrading treatment or punishment[61]. In the note section of that article, the Azerbaijani lawmaker has given a definition to torture. According to that definition, torture is an infliction of severe physical pain or mental suffering based on any form of discrimination or committed with the aim of extracting information or confession from a person or a third person, or intimidating them, or punishing them for the acts they have committed or they are thought to have committed, or compelling them to commit an act against their will[62].

In addition, the CCpR envisages the prohibition of several acts constituting torture, inhuman, or degrading treatment in its Article 15:

> "**Article 15. Guarantee of the right to inviolability of the person**
>
> 15.1. Search and personal examination and other procedures which breach the right to inviolability of the person may not be carried out against the will of the person concerned or his legal representative without a court decision except in cases of detention and arrest.
> 15.2. During the criminal prosecution the following shall be prohibited:
> 15.2.1. the use of torture and physical and psychological force, including the use of medication, withdrawal of food, hypnosis, deprivation of medical aid and the use of other cruel, inhuman or degrading treatment and punishment;
> 15.2.2. the imposition of long-term or severe physical pain or acts which are detrimental to health, or any similar ill-treatment;

[60] Asgarov Z.A. *Konstitusiya huququ.* [Constitutional Law]. Textbook. Baku. Baku University Press. 2011. p.172-173.
[61] Criminal Code of the Republic of Azerbaijan. Adopted 30.12.1999, e.i.f. 01.09.2000.
[62] *ibid*.

15.2.3. taking evidence from victims, suspects or accused persons or from other participants in the criminal proceedings using violence, threats, deceit or by other unlawful acts which violate their rights."[63]

These norms are considered one of the main principles of the Azerbaijani Criminal Procedural Law and the avoiding compliance with it is strictly prohibited. The CCpR also entails a norm which renders the evidences gathered by the infliction of torture void and rejects their recognition[64]. Another Code which consists of norms and principles regarding prohibition of torture, inhuman and degrading treatment is the CEP. Its Article 3.3 states that the CEP is based on the Azerbaijani Constitution, its laws, and non-infliction of torture, inhuman or degrading treatment according to the principles and norms of the international law[65].

The UN CAT has cited several laws as positive aspects of the government's work in the sphere of protection of the right to prohibition of torture. For instance, in 2009, the UN CAT praised the adoption of the Fight against Human Trafficking Law in 2005[66]. Additionally, in 2015, the UN CAT praised the adoption of the following laws which brought the legal basis of Azerbaijan regarding the prohibition of torture in line with the standards put forward by the UN. These laws include the law on the rights and freedoms of persons held in detention facilities adopted on 22 May 2012, the prevention of domestic violence act adopted on 22 June 2010, and the act and the rules on providing medical and psychological care to detained or arrested persons and on detaining persons in medical establishments adopted on 18 April 2013[67].

As it has been established in this section of the thesis, the Republic of Azerbaijan actually has a comprehensive legislation on the prohibition of torture, inhuman and degrading treatment in the form of the main principles enshrined in Constitution, as well as the norms envisaged in the Criminal Code, CCpR, and the CEP along with the aforementioned lower laws. However, the main problem is the implementation of these norms which I will consider in the following sections of this thesis.

[63] Code of Criminal Procedure of the Republic of Azerbaijan. Adopted 14.07.2000, e.i.f. 01.09.2000.
[64] *ibid*. Article 125.2.2.
[65] Code on Execution of Punishments of the Republic of Azerbaijan. Adopted 14.07.2000, e.i.f. 01.09.2000.
[66] Committee against Torture, concluding observations 2009. *op. cit.*, p. 1, § 4(a).
[67] Committee against Torture, concluding observations 2016, *op. cit.*, p. 1, § 4.

1.3. Position and Impact of International Law in Azerbaijan

Theoretically, Azerbaijan is a monistic state in relation to the international law. That is to say, the international legal norms can be directly implemented. The position of international law is the highest in the national legal system of the Republic of Azerbaijan with the exception of the Constitution and the legal acts adopted as a result of the nation-wide voting (e.g. referendum)[68]. There are even articles in several laws and codes of Azerbaijan which envisage the superiority of international legal norms over the local legal norms[69]. The superiority of the Constitution and referendum acts can be explained by their adoption mechanisms. While other acts are adopted either by the parliament or by the bodies from the executive branch, the Constitution and referendum acts are adopted as a result of a nation-wide voting. In other words, the will of the people is higher even than the international norms which are formulated by mutual acceptances of nations. Even the first article of Constitution clearly prescribes that the sole source of power in the Republic of Azerbaijan is the people of Azerbaijan[70].

In the case of legal collisions between the international legal norms enshrined in ratified international treaties and the local ones, the former will be implemented[71]. However, the acts adopted by referenda or the Constitutional norms cannot be neglected in the case of legal collision with international norms. This flows from the text of Article 148 of the Constitution of Azerbaijan. According to the Paragraph II of that Article, international treaties are integral parts of the legislative system of the Republic of Azerbaijan[72].

The issue related to hierarchy of international legal norms *vis-à-vis* domestic ones has not been covered by higher courts in Azerbaijan which have competences to create case law such as Supreme Court or Constitutional Court. However, this issue was considered in the academic works of some scholars. For instance, Mehdiyev cites the Article 27 of the Vienna Convention on Law of Treaties which prohibits the member states from invoking the provisions of their internal laws as justification for their failure to comply with the requirements of a treaty[73]. According to Mehdiyev, this article shows the superiority of international legal norms *vis-à-vis*

[68] 1995 Constitution. *op. cit.*, Article 151.
[69] 2000 Code of Criminal Procedure. *op. cit.*, Article 2.3.; Civil Code of the Republic of Azerbaijan. Adopted 28.12.1999, e.i.f. 01.09.2000. Article 3.2.
[70] 1995 Constitution. *op. cit.*
[71] *ibid.* Article 151.
[72] *ibid.* Article 148, Paragraph II.
[73] Vienna Convention on the Law of Treaties. Vienna 23.05.1969, e.i.f. 27.01.1980, Article 27.

domestic ones[74]. Moreover, Mehdiyev cites Article 151 of the Constitution, arguing that in Azerbaijan, an international legal norm would be considered as a *lex superiori* in comparison with an internal legal norm. However, Mehdiyev also provides a counterargument to it by arguing that previous law-maker's decision to ratify a treaty should not be considered superior to the present law-maker's decision to nullify it according to internal law. Present legislator's will is higher in comparison with that of the previous law-maker[75]. Huseynov, on the other hand, completely supports the superiority of international legal norms over domestic ones by relying on the text of Article 151 of the Constitution[76]. And lastly, Samandarov argues that international legal norms do not have sanctioning ability which makes it important to incorporate it to the national law of the states[77].

International norms include the norms enshrined in the international treaties, the principles, and court decisions. The inclusion of court decision can be explained with the general nature of the articles of international treaties upon which the court decisions are issued. These decisions and judgments are considered tools for interpretation of those treaties. Therefore, the Government cannot argue that court decisions are not one of the sources of law. Mehdiyev considers Article 148 ambiguous as it does not provide answers to the question of whether the decisions of international tribunals such as ICJ (or also, ECtHR and UN HRC, or UN CAT) are parts of Azerbaijani internal law system[78]. In my view, decisions of such tribunals should also be considered an integral part of Azerbaijani domestic legislation since they enrich the international conventions themselves. For instance, Article 3 of ECHR mentions torture, inhuman and degrading treatment, and punishment as its focal points, while it does not provide any details on them. On the other hand, judgments of ECtHR determine which acts in particular fall under the scope of these terms. Moreover, given the legally binding nature of ECtHR judgments, it is plausible to consider them integral parts of Azerbaijani legislation.

The impact of international law in Azerbaijan has been a topic discussed since the independence of the country. Although the Constitution and the laws render international norms and principles higher than local laws, in practice, the law-enforcement bodies, as well as the courts reject their implementation, especially, politically motivated cases, including ill-treatment cases.

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[74] Mehdiyev F., Guliyev E.. *Huquq Nezeriyyesi* [Theory of Law]. Textbook for higher education institutions. Baku, "Genclik" publishing house, 2017. p. 101.
[75] *ibid*.
[76] Huseynov. L. H. *Beynelxalq huquq* [International Law]. Textbook. Second edition. Baku, "Qanun" publishing house, 2012. p. 64.
[77] Samandarov. F. Y. *Cinayet huququ. Umumi hisse*. [Criminal Law. General Part]. Textbook. Revised edition. Baku, "Huquq Yayin Evi" publishing house, 2015, p. 40.
[78] Mehdiyev, Guliyev. *op. cit*., p. 218.

Despite this, the international law has clearly influenced the Azerbaijani legal system since the independence. A country which was closed and isolated from the outside world had a chance to integrate into the "world of legal norms and practices" and took advantage of this chance. It has since adopted laws in compliance with the international treaties which it had signed and ratified, and has gone into co-operation with some of the international organizations who had published numerous reports, and issued several resolutions, recommendations, and concluding observations on Azerbaijan. Azerbaijan was accepted into the CoE in 2001 and accepted the jurisdiction of the ECtHR the following year[79].

Since gaining its independence in 1991, the Republic of Azerbaijan has signed and ratified several international treaties, particularly in the sphere of human rights including the treaties regulating legal relations on the prohibition of torture. These treaties have been mentioned above. It is possible to say that the eventual development of legislation in Azerbaijan (e.g. bringing it in compliance with the international standards etc.) is closely connected to the adoption and subsequent ratification of the aforementioned treaties. Before the independence, the legislation of Azerbaijan was not compatible with the international standards, especially, regarding human rights. The law followed socialist legal doctrine which omitted most of the fundamental human rights, but gave great emphasis on the second generation of human rights (i.e. socio-economic human rights).

Nevertheless, the Constitution of the Azerbaijan SSR adopted in 1978 did include some civil and political rights, albeit formally. One of such rights was the right to inviolability of honour and dignity. According to the Article 55 of the 1978 Constitution, the citizens of the Azerbaijan SSR had the right of judicial protection from the attacks against their honour and dignity, life and health, and personal freedom and property[80]. By contrast, there is no mention of honor in international treaties which have articles on prohibition of torture. In my opinion, this is a cultural issue. In Western World, dignity is considered very important. The act should humiliate and debase someone personally, which means that he/she should feel the distress on him/herself. However, in the Eastern World and particularly in the Islamic World, honor is considered one of the highest values of society. People are overly concerned about what others think about them. Therefore, in both Constitutions of Azerbaijan along with the Criminal Code, honor is mentioned alongside with dignity.

[79] The Law No. 236-IIQ "on ratification of the European Convention on Human Rights and Fundamental Freedoms and 1st, 4th, 6th, and 7th Protocols thereto". Adopted 25.12.2001, e.i.f. 31.03.2002.
[80] The Constitution of the Soviet Socialist Republic of Azerbaijan. Adopted 21.04.1978. Article 55.

The aforementioned article does also emphasize the issues related to ill-treatment as the protection of honour, dignity, life, and well-being might be objects of torture, inhuman and degrading treatment. Nevertheless, practically this right did not work, as torture in the law-enforcement system of Azerbaijan SSR was endemic. With the adoption of a new constitution on November 12, 1995, the very first in the independent history of Azerbaijan, the rights and freedoms enshrined in the international treaties were incorporated into it and a specific section on fundamental human rights and freedoms were established[81]. However, the practical problems still exist and torture is still endemic in the law-enforcement system of Azerbaijan. Although the legal framework on the protection from ill-treatment exist as mentioned before, in practice, rarely law-enforcement bodies comply with its principles. It is, however, true that the international legal norms incorporated into the legal system of Azerbaijan have enriched it and made it compatible with the international standards theoretically and formally. Despite this, the practical issues (the issues regarding the implementation of those norms) are partly improved with the recommendations of the international organizations that the Republic of Azerbaijan is a part of. For instance, recommendations, resolutions, and other documents issued by the CoE and its sub-bodies have contributed a lot to the improvement in implementation of those norms. For example, specific laws in relation to some issues, such as rights and freedoms of persons in the detention facilities[82], law against domestic violence[83], and law on combatting human trafficking[84] have been adopted in the course of last two decades. The work of the UN CAT and the CoE CPT can be mentioned. The concluding observations of these bodies have cited several issues, both practical and legal. The aforementioned laws were adopted in accordance with their recommendations. However, their full implementation is still pending. I will shed light on them in the following chapters.

In conclusion, the international law norms have the highest value in the Azerbaijani legal system after the Constitution and the referenda acts. However, their implementation remains a problem. On the other hand, the international law has impacted the Azerbaijani legal system and continues to do so in the forms of binding and non-binding documents issued by the international organizations. In the terms of practice, these developments still continue and a lot of work still has to be done. This issue will be elaborated by me in the following chapters.

[81] It is called as such "Fundamental human rights and freedoms".
[82] See The Law No. 352-IVQ "on the rights and freedoms of persons held in detention facilities". Adopted 22.05.2012, e.i.f. 11.07.2012.
[83] See The Law No. 1058-IIIQ "on the prevention of domestic violence". Adopted 22.06.2010, e.i.f. 31.10.2010.
[84] See The Law No. 958-IIQ "on the fight against human trafficking". Adopted 28.06.2005, e.i.f. 06.08.2005.

CHAPTER II. CASE LAW OF AZERBAIJAN REGARDING THE PROHIBITION OF TORTURE, INHUMAN AND DEGRADING TREATMENT

2.1. Azerbaijani Cases in the ECtHR

In this section, the main emphasis will be put on the analysis of the existing ECtHR judgments on the prohibition of torture against Azerbaijan and the main features and focal points of the cases. There are a lot of similarities among all of these cases. These similarities can illustrate the general issues creating a bigger picture of violations of right to prohibition of torture. Therefore, it would be important to generalise them in the end of this chapter. As I mentioned the politically motivated nature of violations of prohibition of torture, it is important to cite the similarities.

I will analyse all of the 32 cases issued by the ECtHR up to March 2021 in particular and find the main problems emphasized by the ECtHR. Additionally, I will also cite the violations of other articles of the ECHR which are closely connected with the inflictions of ill-treatment in the cases concerning the Republic of Azerbaijan. This is relevant to answer the research questions regarding the main inefficiencies in the work of internal supervisory authorities and the main features of violation of right to prohibition of torture. This would also help me to prove my hypotheses.

2.1.1. Cases where the ECtHR established the act of torture

The first case on the prohibition of torture exercised by the ECtHR against Azerbaijan was the case of Mammadov (Jalaloglu) v. Azerbaijan[85]. In this case, the applicant was a prominent social and political figure in Azerbaijan who was a chairman of a famous political party which was a part of the opposition coalition taking part in the presidential elections held in 2003. After the elections, members of many opposition parties, including the one led by the applicant began to protest against the results of the elections, calling it “rigged” and “illegitimate”. The applicant himself did not participate in the protests. He was arrested two days after the protests and brought to the body known as MIA OCU which usually deals with the crimes perpetrated by the organized criminal groups. He was allegedly tortured there and later convicted[86]. The Court found that the forensic expert opinion was ambiguous and belated. The authorities did not instigate forensic medical examination immediately, which in the Court’s view, was

[85] ECtHR 34445/04, Mammadov (Jalaloglu) v. Azerbaijan
[86] *ibid.* § 5-8.

unacceptable as the wounds and traces of inflicted ill-treatment tend to disappear. Moreover, the Court cited the procedural issues related to the inflicted ill-treatment. The Court cited the reluctance of the domestic authorities to examine all the witnesses, specifically, the ones in favour of the applicant. The domestic authorities, specifically, the courts relied on the testimonies of the police officers, who allegedly might have ill-treated the applicant. The forensic report established that the applicant was severely injured in his leg. The authorities did not take into consideration the testimony of one of the officers who worked for the MIA OCU at the time who claimed that the applicant was completely healthy and well when he was brought to the premises of the MIA OCU for the first time, which meant that the injuries were inflicted upon him in the premises of MIA OCU. Under these circumstances, the Court held the violation of the Article 3 both in its substantive and procedural limbs. It is important to note that the Court found the infliction of torture upon the applicant in the form of repeated blows to the soles of the feet with a blunt object, a practice widely known as *falaka*[87].

In addition to that the Court also held the violation of the Article 13 citing the fact that the domestic courts did not independently assess the evidences submitted to them, but instead relied heavily on the investigator's opinions and openly endorsed them. Therefore, the Court found that the remedies in respect of the applicant's case was completely ineffective thus finding the violation of the Article 13[88].

In the case of Pirgurban v. Azerbaijan[89] the domestic Court of Appeal had already recognized the fact of ill-treatment, but the perpetrators were never identified and punished. Therefore, the ECtHR recognized the applicant as a victim and found the violation of Article 3 with regards to torture[90]. The Court also found the violations of Articles 5 § 1, 5 § 3, and 6 § 1. The Court found that the applicant was arrested for more than 48 hours and was not brought before a criminal court within this period. Moreover, the domestic courts used a standard formula (the possibility of the applicant absconding the justice) to detain the applicant and put him on remand. Lastly, the proceedings in respect of the applicant were conducted for more than 4 years which derogated from the requirement of Article 6 § 1 (reasonable time)[91].

[87] *ibid*. § 66.
[88] *ibid.* § 87.
[89] ECtHR 39254/10, Pirgurban v. Azerbaijan.
[90] *ibid.* § 71, 73
[91] *ibid.* § 114.

The case of Saribekyan and Balyan v. Azerbaijan[92] is about an Armenian national who accidentally crossed the Armenian-Azerbaijani border and was arrested by the Azerbaijani military police. The person was allegedly tortured and died in prison. His parents lodged an application to the Court. The Government argued the non-exhaustion of domestic remedies, but the Court found that there were no diplomatic relations between two countries, no postal service or transport connections were provided. Therefore, the applicants had no chance to enjoy the Azerbaijani domestic remedies[93]. The Court found the violation of both limbs of Article 2. The Court also found the violation of Article 3 in the form of torture, but the findings were connected to the ones related to the fact of death. Therefore, I will mention the findings of the Court related to the fact of death which were crucial in finding of the violation of Article 3.

Firstly, the person was not injured before being arrested. Secondly, there were two forensic examinations conducted during the progress of this case: 1) the Azerbaijani examination; 2) the Armenian examination. The Azerbaijani examination was conducted hours after the person was found dead. It lacked detailed information and mentioned that the person had committed suicide. On the other hand, the Armenian examination was conducted a month after the death, but contained detailed information, with schematic drawings and pictures of the person showing the apparent injuries that were not found by the Azerbaijani medical experts. Therefore, the violation of the substantive limb was found. As to the procedural limb, the Azerbaijani authorities' investigation did not follow any alternative line and was concentrated mostly on the allegations of the person being a "saboteur" and a "spy". There was no careful investigation on ethnic hatred being a contributing factor in the person's death. Moreover, the Azerbaijani authorities did not submit any credible information to the Armenian side and the applicants became aware of their son's death through the Azerbaijani media outlets. The Azerbaijani Government also fell short of its obligations under the 1993 CIS Convention on legal assistance and did not co-operate with the Armenian side which was also a party-state to the Convention[94].

2.1.2. Cases where the ECtHR established the act of inhuman and degrading treatment.

The first case where the Court found the violation of Article 3 of ECHR by Azerbaijan in the form of inhuman and degrading treatment is the case of Muradova v. Azerbaijan[95]. This case

[92] ECtHR 35746/11, Saribekyan and Balyan v. Azerbaijan.
[93] *ibid.* § 48.
[94] *ibid.* § 73.
[95] ECtHR 22684/05, Muradova v. Azerbaijan.

contains a feature that is very specific regarding ill-treatment cases in Azerbaijan. I will cite this problem in the summary of this section.

The applicant was an opposition activist who participated in the aforementioned 16 October, 2003 demonstrations which were violently dispersed by the police[96]. The applicant was waiting at the end of the Freedom Square where the demonstrations and subsequent police interventions were taking place. She was pushed by someone from behind and when she asked the nearby running riot police officer to help her to stand up, the latter hit her in the right eye with a rubber truncheon, permanently blinding her in the right eye[97]. The Court found the violation of Article 3 in both its substantive and procedural limbs.

Firstly, the Court had to declare the application admissible because the Government had objected the application on the ground of non-exhaustion of effective domestic remedies. The Government objected that the applicant did not appeal to the Constitutional Court. However, the ECtHR found that under the national law, in order to appeal to the Constitutional Court, one had to lodge an appeal as the additional cassation in the Plenum of the Supreme Court which according to one of the past decisions of the Court, was not an effective remedy.[98] Therefore, there was no need for the applicant to lodge an appeal to the Constitutional Court.

As to the violation of the substantive limb of the Article 3 of the Convention, the Court noted that the medical records proved that the eye injury sustained by the applicant was perpetrated during the protest day and were likely inflicted by the riot police officers. The burden of proof lied on the Government who in turn, failed to prove that the ill-treatment was not inflicted by its agents. There was nothing in the case files which indicated that the applicant was engaged in some kind of a violent behaviour which would enable the police officers to apply force. In the Court's view, the Government applied the force indiscriminately. The Government should have taken all appropriate measures to avoid the deterioration of the protests into violent riots before deciding on applying the force. In this way, the Court found the violation of the substantive limb of the Article 3, in the form of inhuman and degrading treatment[99].

The case is significant because of the bogus and utterly nonsensical argument that the Government came up with in respect of the applicant's eye injury. The Government stated that

[96] See *supra*. p. 25.
[97] *ibid.* § 13.
[98] ECtHR 36454/03. Babayev v. Azerbaijan.
[99] Muradova case, *op. cit.*, § 113, 114.

the applicant endured that injury when she was pushed from behind and fell to the ground. According to the Government, the applicant fell on a blunt object which resulted in her losing sight permanently in her right eye[100]. Subsequently, this argument was rejected by the Court. It is important to note that there will be several cases of such unimaginably irrelevant arguments put forward by the Government in respect of the origins of the injuries sustained by the applicants.

As to the procedural limb of the Article 3, the Court noted that the investigator in this case did not question all the witnesses which could give detailed information on the events. The applicant brought two witnesses on her behalf, but the domestic authorities argued that there were some discrepancies in their respective testimonies without pointing out a significant feature. Moreover, the domestic courts had failed to hear testimonies of all witnesses. But instead, they had heard the testimonies of 8 other witnesses which either were not directly involved in the aforementioned events or were not involved at all. To aggravate the situation, they were questioned a year after the incident and were merely shown a picture of the applicant. The Court noted that under such circumstances the events in the memory of the witnesses can disappear and the witnesses might forget about the events altogether. Six of the witnesses were police officers who were present at the Freedom Square in the course of the events. The police officers who testified as witnesses were chosen randomly. Other two witnesses who were not police officers were not subject to face-to-face confrontation with the applicant. The Court noted that the testimonies of police officers should not be taken face-value as they were interested people in this case[101].

Furthermore, the Court noted the failure of the domestic authorities to recognize the applicant as a victim of a crime as a factor rendering the investigation into the applicant's allegations ineffective[102]. And lastly, the Court draw the attention to the fact that the medical examination of the applicant was rendered in a belated manner as the first forensic report was issued eight months after the incident and the second one was drawn up approximately a year after the incident[103]. In the light of all these findings, the Court held the violation of the Article 3 of the Convention establishing that the applicant was subjected to inhuman and degrading treatment.

[100] *ibid.* § 17.
[101] *ibid.* § 126, 127, 128, and 129.
[102] *ibid.* § 130.
[103] *ibid.*

Rizvanov v. Azerbaijan[104] and Najafli v. Azerbaijan[105] are two cases which are centred around the ill-treatment inflicted by police officers on journalists during peaceful demonstrations. The ill-treatment was followed by bogus arguments brought up by the Government both during domestic proceedings and the proceedings before the Court.

In the Rizvanov case, the applicant was an independent journalist filming the events of 9 November, 2005 when there was organized a peaceful and authorized demonstration of political parties. It is important to note that the demonstrations took place after the Parliamentary elections of 2005. The applicant climbed a metal construction situated in the middle of the square where the demonstration was transpiring with the aim of filming the event in a more detailed manner. However, he was hit by a police officer several times. The officer was using a rubber truncheon. After beating him, the officer approached other police officers present in the dispersal of demonstration and claimed that had he hit the applicant harder, he would have already been dead. The Government argued that the inflicted force was necessary as the metal construction was loose and the applicant climbing it might have created dangerous situation not only for the applicant himself, but also for the nearby standers[106].

The Court found the violation of Article 3 in both its substantive and procedural limbs. As there was a medical record proving the applicant's injuries, it was incumbent on the Government to prove that the force was necessary during the demonstration. The Government failed to do so. Firstly, the applicant was wearing a blue vest indicating that he was a journalist. Secondly, the metal construction used by the applicant had already been used by other people in previous circumstances without any casualties or dangers. Thirdly, the police officers did not even warn the applicant about the possible dangers that the metal construction might create before applying force. And fourthly, the applicant was not engaged in any violent behaviour that could render the force the only method of preventing it. Moreover, other journalists that were present in the demonstration took photos and videos of the applicant's ill-treatment and the aforementioned words of the police officer who ill-treated him. The Court took them as evidences. Therefore, it held that the inflicted force was unnecessary and excessive, thus violating the applicant's right set forth in the Article 3. The force amounted to inhuman and degrading treatment[107].

[104] ECtHR 31805/06, Rizvanov v. Azerbaijan.
[105] ECtHR 2594/07, Najafli v. Azerbaijan.
[106] Rizvanov case, *op. cit.*, § 41.
[107] *ibid.* § 50, 51.

The Court also found that the official medical examination of the applicant was conducted only 21 days after the incident. Moreover, this medical certificate did not include the injuries found by the initial medical record obtained independently by the applicant. The domestic authorities rejected the findings of the initial record. Furthermore, the domestic authorities failed to take the testimonies of the witnesses in favour of the applicant, but did so in respect to the testimonies given by the police officers. Thus, the Court found the violation of the procedural limb of Article 3[108].

In the Najafli case, the applicant was an independent journalist filming the events of another demonstration which was unauthorized. The applicant submitted the copy of the medical record proving his injuries inflicted on the day of demonstration. Moreover, he had the pictures of him taken immediately after the demonstration where his injuries were clearly visible. The Court found that the inflicted ill-treatment was unnecessary as the applicant did not resort to violence. Thus, the Court found an act of inhuman and degrading treatment which amounted to violation of the substantive limb of Article 3[109].

As to the procedural limb of Article 3, the Court found several drawbacks. Firstly, there was no actual investigation conducted until January, three months after the actual incident. Secondly, the applicant was not informed about the decision of the investigator regarding the conduction of forensic examination. Thirdly, the applicant did not have an access to the case files. Fourthly, the prosecutor's office who was responsible for investigating the complaints on torture, delegated the issue to police, a body whose agents allegedly ill-treated the applicant. This issue heavily undermined the independence of the investigation into the ill-treatment of the applicant. Lastly, even after this delegation, the applicant could not receive any documents on the actual steps taken by the police. All these factors were enough for the Court to find the violation of the procedural limb as well[110].

Lastly, the Court found the violation of the Article 10 (the freedom of expression). As the applicant was a journalist who was not wearing a blue jacket, but a badge identifying him as a journalist, the Court found that the ill-treatment inflicted on the applicant undermined his duties as a public watchdog in a democratic society. Doing so, would discourage other journalists from doing their respective duties. Additionally, the Court took into consideration the fact that while being ill-treated, the applicant reiterated several times that he was a journalist. Despite this, the

[108] *ibid.* § 58-61.
[109] Najafli case, § 39, 40.
[110] *ibid.* § 49-56.

police officers continued to beat the applicant. The Court rendered it to be not necessary in a democratic society[111].

In the case of Rzakhanov v. Azerbaijan[112], the applicant was complaining about the conditions of his confinement in prison. The Court reiterated the requirement of the CoE CPT about at least one hour of outdoor exercise endowed to each inmate in the prison. However, in the applicant's case, he was confined to solitary confinement for 23 hours a day with a very few human contact. In response to the Court's question about the reasons of the applicant's solitary confinement, the Government submitted that the applicant was sending unsubstantiated complaints to the supervisory bodies. In this respect, it was essential to keep him alone in a cell. However, the Court noted that this cannot be a good reason to keep someone in a solitary confinement. This constituted the violation of the Article 3 in its substantive limb as an act of inhuman and degrading treatment[113]. Moreover, there were no procedural safeguards for the applicant as his complaint about solitary confinement was reviewed by the prison authorities only a year later.

The case of Tahirova v. Azerbaijan[114] is about the police brutality during a peaceful demonstration. The applicant was a participant of another pro-opposition demonstration in 2005 and was severely beaten by police, kicked in the abdomen area, and received serious injuries.

The Court found the violation of the substantive limb of Article 3 citing the following reasons. Firstly, the applicant underwent an immediate medical expertise after the demonstration which found that the applicant was severely injured in her abdomen. Secondly, the applicant had submitted photos of her surrounded by police who were armed with rubber truncheons and helmets during the demonstration. The Government relied on the report issued by the Ministry of Healthcare regarding the applicant's allegations 5 years after the incident. The Court rejected this stance as the report was issued way later than the events in question and did not involve the actual medical examination of the applicant, whereas the first report was drawn up immediately after the incident and involved the medical examination of the applicant[115]. Lastly, the Court considered the necessity of the use of force by the police. The Court found that the applicant did not pose any threat to the police, nor she used violence against anyone. Therefore, the use of force was considered unnecessary, excessive, and unacceptable by the Court[116].

[111] *ibid.* § 70.
[112] ECtHR 4242/07, Rzakhanov v. Azerbaijan.
[113] *ibid.* § 74, 75.
[114] ECtHR 47137/07, Tahirova v. Azerbaijan.
[115] *ibid.* § 41, 42.
[116] *ibid.* § 44.

As to the procedural limb of the Article 3, the Court noted that although the applicant did not lodge any criminal complaints with regards to criminal investigation into her alleged ill-treatment by the police, she had lodged a civil complaint to redress the material damage sustained by her. Therefore, the domestic authorities should have already been aware of the situation and initiated a criminal investigation into the matter. Even domestic law prescribed this. The domestic legal provisions also required the police to inform local prosecutor about the applied force within 24 hours, which the police failed to do so. Moreover, the CCpR prescribes a requirement for a prosecutor to issue a criminal case in the case of absence of a complaint by the victim. Under these circumstances, the Court found the violation of the procedural limb of the Article 3[117].

The Court also found the violation of the Article 11. The Court brought the following arguments. Firstly, the demonstrators, including the applicant did not pose any threat to the public order. Secondly, the demonstration was organized in order to protest against the alleged irregularities of the election process which is one of the driving forces and values of a democratic society. And lastly, the Court was astonished by the Government's impatience to disperse the demonstration as it had prepared the riot police prior to the scheduled end of the demonstration[118]. It is important to show that ill-treatment is politically motivated as it is inflicted *vis-à-vis* government intrusion to a democratic process such as freedom of assembly which further proves my hypothesis about the political motives behind the ill-treatment cases.

The case of Layijov v. Azerbaijan[119] can be considered a ground-breaking case as it has created a precedent that has been applied in many cases against Azerbaijan. Firstly, the Government objected that the application should be declared inadmissible as the domestic courts had already acknowledged the infliction of ill-treatment. The Court noted that mere acknowledgement of the ill-treatment does not abolish the status of a victim of an applicant. There was no compensation awarded and no perpetrators punished. Therefore, the applicant was still a victim[120]. The Court established that as the applicant had no injuries before being brought to the police station, but did bear them afterwards, the burden of proof lies on the Government. In response, the Government alleged that the applicant was injured as a result of being dragged by the police. According to the Government, the applicant was fiercely obstructing justice, so, the police had to use force. As the applicant resisted the arrest, he sustained some injuries during the application of force by the

[117] *ibid.* § 61.
[118] *ibid.* § 73.
[119] ECtHR 22062/07, Layijov v. Azerbaijan.
[120] *ibid.* § 35.

police. The Court found that the applicant did not resort to violence nor posed any threat. The applicant's body was depicted on a video footage which was cited in the decision of the domestic Court of Appeal, but was never submitted to the Court by the Government. In the light of all these findings, the Court held the violation of Article 3 in its substantive limb[121].

Although the Court of Appeal acknowledged the ill-treatment, no actual investigation was instigated in order to find and punish the perpetrators. The investigator refused to instigate an investigation despite the existence of a forensic report which had found the injuries on the applicant's body. Moreover, the investigation could not be independent as the body that examined the applicant's complaint was the local police station where the applicant was subjected to ill-treatment. Thus, the Court found the violation of the procedural limb of Article 3[122].

The Court also found the violation of Article 6 as regards to the quality of the evidence (the bag with drug substance found in the pocket of the applicant) and the opportunity of the applicant to challenge its authenticity. Firstly, the search on the applicant was not immediately conducted. There was a 30 minute time-lapse between his arrest and personal search which according to the ground-breaking precedent of the Court, suggests that the evidence might have been planted. Secondly, the Government did not even submit the video recording of the search. Thirdly, for some reason, the applicant was not brought to the police station of the town where he was arrested, but instead, was brought to the police station of the neighbouring town which usually took longer to reach. Fourthly, the Court reiterated that the applicant was subjected to ill-treatment, thus diminishing the quality of the evidence obtained by the police. Fifthly, the applicant's arrest was not documented and he was kept unlawfully for a day. And lastly, despite the applicant tried to challenge the authenticity of the evidence, his requests were rejected by the domestic authorities[123].

Emin Huseynov v. Azerbaijan[124] is another case about the ill-treatment of journalists. The applicant was arrested during a gathering in a private café and allegedly beaten afterwards at the police station. The Court found the violations of both the procedural and substantive limbs of Article 3. The Court noted that despite the applicant had some previous health problems, it was incumbent on the State to give explanation on why a person with no apparent health issues

[121] *ibid.* § 44-47.
[122] *ibid.* § 54-56.
[123] *ibid*. § 66-77.
[124] ECtHR 59135/09, Emin Huseynov v. Azerbaijan.

before the arrest is immediately taken to hospital after it. The Government failed to give credible explanation on this. There were witness statements of applicant being subjected to beatings[125]. Moreover, it was clear that the actual forensic examination was conducted 3 days later than the investigator's decision on this. Additionally, the next forensic reports (there were several of them) apparently departed from their first findings and did not substantiated them[126]. With regards to the procedural limb, the domestic authorities refused to institute criminal investigation into the applicant's allegations. When they eventually initiated it, the same institution whose agents had allegedly ill-treated the applicant was involved. Moreover, the press-secretary of the MIA claimed that the allegations were not true, thus clearly showing that the investigation was not independent as the MIA had a superior authority over the investigating police station. The authorities failed to inform the applicant about the progress of the criminal inquiry. The applicant was not provided with the decision on the refusal to instigate criminal investigation along with the forensic reports[127].

Alongside with these drawbacks, the Government also submitted that the applicant's arrest had the aim of identifying him as he did not present himself at first. However, the Court found that the applicant had done so before being arrested. Therefore, his detention was arbitrary, thus violating the Article 5 § 1 in respect of him. And lastly, the Court found the violation of the Article 11 on the grounds of intervention to a private meeting and failure to substantiate the reasons of intervention[128].

In the case of Hilal Mammadov v. Azerbaijan[129], the applicant was beaten and taken to the police station, and subsequently, convicted. There were two distinct forensic reports on the applicant's injuries: 1) the first report concluded that the injuries might have caused by the force of police; 2) the second report concluded that the injuries were sustained after the applicant resisted the arrest. As a result of this, his body contacted "the angular protruding parts of the police vehicle" which resulted in his injuries. The second report was drawn up 2 months after the incident and did not involve the examination of the vehicle[130]. The Court noted that the very fact that the applicant's injuries were sustained during an arrest makes it incumbent on the State to prove otherwise. The Government failed to do so. Moreover, the applicant was not using force or posing threat thus making the use of force by the police unnecessary and excessive. This was an

[125] *ibid.* § 64.
[126] *ibid.* § 61.
[127] *ibid.* § 74.
[128] *ibid.* § 87, 99.
[129] ECtHR 81553/12, Hilal Mammadov v. Azerbaijan.
[130] *ibid.* § 81, 82.

act of inhuman and degrading treatment, according to the Court. As to the procedural limb, an investigation full of shortcomings was launched in respect of the applicant's allegations. Firstly, it was delayed. Secondly, the courts questioned only 4 police officers whose statements were identical although the applicant claimed that there were 6 or 7 of them during his arrest. Moreover, despite there were contradictions between the applicant's statements and those of the police officers, no face-to-face confrontation was organized between them. Thirdly, the investigative authorities did not inform the applicant of the progress regarding the investigation. The applicant was not provided with the forensic reports. The violation was found[131]. The Court also found the violation of the Article 34 (individual applications) in connection with the applicant's lawyer being disbarred and subsequently, denied access to the applicant in relation with his application to the ECtHR[132].

The next case is the case of Yunusova and Yunusov v. Azerbaijan[133]. The Court found the substantive limb of Article 3 violated. Firstly, the first applicant was provided with only one medical examination during the first few months in detention. Secondly, as the applicants had hepatitis C, they needed specific care, but no virologist examination was conducted and the applicants were provided with only occasional examinations by prison doctors. The required medications were sent by the applicants' friends and never provided for by the prison authorities. Although a foreign independent doctor examined the first applicant, there were some serious issues regarding the examination: 1) the applicants were never provided with the medical prescriptions or medical documents; 2) the independent doctor merely stated that the medical treatment received by the applicants was in compliance with the international standards. Additionally, the Government failed to provide information on the necessary conditions for any medical treatment to be followed through. No info on the food provided or the environment adapted to the state of health of the applicants[134]. Despite the first applicant had refused to undergo a medical examination, she did not do it in "bad faith", but as a form of protest to the fact that she had not been examined for three months until that time[135]. Furthermore, the facts that both applicants were transferred to medical department of prison service at the request of doctors and the second applicant was released from prison on health grounds prove that their medical treatment was not adequate despite they had already been diagnosed with serious health problems. This amounted to inhuman and degrading treatment[136].

[131] *ibid.* § 95-98.
[132] See *infra*. p. 60.
[133] ECtHR 59620/14, Yunusova and Yunusov v. Azerbaijan.
[134] *ibid.* § 143-147.
[135] *ibid.* § 148.
[136] *ibid*. § 149.

In this case, the Court had imposed an interim measure upon the Government. The measure consisted of providing the applicants with adequate medical service, transferring them to an appropriate medical facility, and submitting all the material and documents related to it. The Government submitted the monthly reports, but failed to comply with other measures. Failure of the Government to comply with the interim measure constituted a violation of the Article 34[137].

Mustafa Hajili v. Azerbaijan[138] is a case about ill-treatment of a journalist. The Court found both the substantive and the procedural limbs of Article 3 to be violated. Firstly, the applicant had evidences in the forms of forensic report and witness testimonies, but the domestic authorities were completely silent on the method that the injuries were caused by. Secondly, the questioned police officers' testimonies were identical, albeit being questioned separately. Thirdly, no face-to-face confrontation between the applicant and the police officers were conducted. And lastly, the applicant did not resort to violence, rendering the force inflicted by the police unnecessary and excessive thus constituting the violation of the substantive limb of Article 3[139]. With regards to the procedural limb, the domestic authorities refused to initiate an investigation despite the detailed information submitted by the applicant. The Government claimed that the video recordings allegedly taken by the security cameras inside of the police station were not available as they were automatically deleted after a month. However, the applicant lodged his complaints only two days after the alleged incident. Therefore, the domestic authorities had the chance to examine the video footages. Moreover, in the course of the investigation, the prosecutor failed to substantiate the reason why he took the testimonies of 4 police officers more seriously than those of two pro-applicant witnesses[140]. The violation was found.

In the case of Mammadov and others v. Azerbaijan[141], the Court found that during the initial detention at the MNS, the applicant had no access to the outside world which meant that he had zero opportunity to obtain evidence in his defence. Moreover, the applicant's family members and lawyer were not informed about his whereabouts which prevented them from sending him the appropriate medication. Also, the Government could not provide the Court with sufficient evidence that the applicant had received adequate medical care and medication. These factors amounted to an inhuman and degrading treatment[142]. The Court also found the violation of the procedural limb citing following shortcomings. The domestic authorities had failed to conduct

[137] *ibid.* § 120.
[138] ECtHR 42119/12, Mustafa Hajili v. Azerbaijan.
[139] *ibid.* § 39-43.
[140] *ibid.* § 51-53.
[141] ECtHR 35432/07, Mammadov and others v. Azerbaijan.
[142] *ibid.* § 116.

forensic examination of the applicant for up until two months after the alleged incident. They did not conduct an effective investigation, question the applicant, his family members, and his lawyer, and failed to examine the allegations of the applicant along with failing to question witnesses[143].

As the first applicant had died in the prison during the examination of the case, the Government had had the obligation to find the casual link between the applicant's placement in the punishment cell and his eventual death which the Government failed[144]. The violation of Article 2 in its procedural limb was found by the Court. Lastly, the Court found the violations of the Articles 5 § 1 and 5 § 3 citing the unlawful, unrecorded detention of the applicant for a day and failure to justify his detention respectively.

In the case of Yagublu and Ahadov v. Azerbaijan[145], the first applicant did not bear any injuries before being brought to police station, but did so after that. The second applicant had submitted the photos of police twisting his arms. The Court established that the second applicant never used any violence against the police. Furthermore, as the injuries were sustained during dispersal of the demonstration, it was incumbent on the State that it was not involved in the infliction of force upon the applicant. The Government failed to do so, which led to the finding of the violation of the substantive limb of Article 3 in the form of inhuman and degrading treatment[146]. As to the procedural limb, the Court found that the domestic authorities did not attempt to solve the case at all. Moreover, they considered the testimonies of 5 police officers while dismissing those of 2 pro-applicant witnesses without any credible explanation. In the second applicant's case, the domestic authorities dismissed the photo of applicant's arm being twisted by the police, but approved the forensic report, and the testimonies of the applicant and 4 police officers. These factors constituted violation of procedural limb[147]. Moreover, the Court found the violations of Articles 5 § 1, 6 § 1, 6 § 3 (c) (d), 11 and 34. The violation of Article 34 was connected to the case of Aliyev v. Azerbaijan where the documents related to the applicant's clients (the applicant was a human rights lawyer)[148] were seized by the prosecuting authorities. In connection with that fact, the Court found the violation of Article 34 in the case of Yagublu and Ahadov.

[143] *ibid.* § 125, 126.
[144] *ibid.* § 149.
[145] ECtHR 67374/11 and 612/12, Yagublu and Ahadov v. Azerbaijan.
[146] *ibid.* § 52-57.
[147] *ibid.* § 65-68.
[148] See. *infra*, p. 45.

The case of Ibrahimov and Mammadov v. Azerbaijan[149] is a case about youth activists being ill-treated for painting graffiti on the statue of the previous president of Azerbaijan. The Court found the violation of both the substantial and procedural limbs of Article 3. The applicants brought detailed information on their ill-treatment and the international reports corroborated their statements. UN WGAD found the applicants' allegations to be true[150]. Lawyer's statements also corroborated. The first applicant had a redness on his neck according to the forensic report, but the Government failed to explain its origin. The forensic reports were drawn up two weeks after the incidents and lacked details. Moreover, the Court cited that the access to a lawyer is "one of the fundamental safeguards against ill-treatment"[151]. The CoE CPT had mentioned the lack of access of criminal suspects to their lawyers[152]. The CoE CPT also mentioned that their confessions had been obtained in the presence of an *ex officio* (state-funded) lawyer[153]. The Court took them into consideration. These factors amounted to inhuman and degrading treatment.

As to the procedural limb, aside from the delay in the forensic examination, the Court also mentioned that the video recording were not obtained and examined by the domestic authorities despite the prompt manner in which the applicants complained about the ill-treatment. The Government argued that the recordings are automatically deleted after 7 days. However, the Court took the Government's previous argument on the matter in the case of Mustafa Hajili where the Government argued that the video recordings in that police station[154] are automatically deleted after a month. There was clearly a discrepancy between the Government's current and previous arguments. Even if the Government's argument was true, the applicants had lodged a complaint on the matter only a day after the incident which enabled the investigators to take appropriate measures to obtain and examine the video recordings. Moreover, the investigators rejected the applicants' arguments and relied heavily on the written replies submitted by the police station whose agents had allegedly ill-treated the applicants. The CoE CPT had stated that the impunity that the police officers got away with in Azerbaijan rendered the situation in the country "exceptional in the whole CoE"[155].

[149] ECtHR 63571/16, 2890/17, 39541/17, 74143/16, 2883/17, and 39527/17, Ibrahimov and Mammadov v. Azerbaijan.
[150] *ibid.* § 36.
[151] *ibid.* § 96.
[152] Council of Europe. Report to the Azerbaijani Government on the visit to Azerbaijan carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 29 March to 8 April 2016. CPT/Inf (2018) 35. p. 32. § 41.
[153] *ibid*.
[154] In both cases, the ill-treatment was allegedly inflicted by the agents working in the same police station. See *supra,* p. 37.
[155] Council of Europe CPT report 2017. *op. cit.,* § 28. p. 19.

In the case of Shuriyya Zeynalov v. Azerbaijan[156], the applicant's son died in custody. In the post-death video that went viral over the internet, the applicant's son was seen with lots of injuries[157]. The Court found the violation of Article 3 in the form of inhuman and degrading treatment. The applicant's son did not bear any injuries before the arrest, but did so after it. Moreover, the domestic authorities tried to defame the applicant's son, calling him "a spy working for Iran" several times in their public statements which showed that the intention of ill-treatment was present[158]. Additionally, the applicant was not provided with the forensic report, was not informed about his son's death, and could not dispute the findings of the forensic examination. Article 2 and Article 3 were also found to be violated in respect of their procedural limbs. In fact, the forensic report failed to record the injuries. The investigating authorities did not take any action even after the dissemination of the aforementioned video recording and the injuries visibly seen in it were not mentioned in the forensic report[159].

The cases of Haji and others v. Azerbaijan[160], Haziyev and others v. Azerbaijan[161], and Mahaddinova and others v. Azerbaijan[162] contain violations of Article 3 in respect of several applicants. Therefore, in order to keep it short, I will mention only the general natures of the violations. Regarding the substantive limb, the Court mentioned the following: 1) While a person was getting beaten by the agents of a state-owned oil company, the police officers stood by and did not intervene. 2) Late forensic examination could not prevent the applicant and his relatives from obtaining evidences on his injuries. The domestic authorities rejected these evidences, but the injuries were visible. 3) Forensic expert opinions contained information on the injuries. As to the shortcomings regarding the procedural limb, the Court noted the following: 1) The investigation's arguments were considered more credible than those of the defence without any explanation; 2) No important investigative measures (face-to-face confrontation, examination of video recordings, questioning of witnesses, forensic examination, etc.) were conducted; 3) Belated medical examinations; 4) Inactivity in the investigation and no access to it whatsoever along with no information on the progress of it; 5) No access to family or lawyer secured; 6) Obtained forensic reports were of low quality; 7) No comprehensive investigation of the allegations of ill-treatment; 8) The applicants either received the documents regarding the investigation too late or did not receive them at all; 9) Bogus explanations (allegations of

[156] ECtHR 69460/12, Shuriyya Zeynalov v. Azerbaijan.
[157] *ibid.* § 7.
[158] *ibid.* § 5.
[159] *ibid.* § 85.
[160] ECtHR 3503/10, 25216/10, 35563/11, 68351/11, 22906/12, 27680/13, 38323/14, and 19883/15, Haji and others v. Azerbaijan.
[161] ECtHR 3650/12, 12016/12, 69878/13, 31474/14, and 40906/15, Haziyev and others v. Azerbaijan.
[162] ECtHR 34528/13, Mahaddinova and others v. Azerbaijan.

disrupting the public order without any conviction) were provided by the Government; 10) The domestic authorities did not consider the defence's evidences and relied heavily on the police officers' statements in some cases.

2.1.3. Cases where the ECtHR established an act of degrading treatment

This group of cases concerns the issues regarding the conditions of detention and adequate medical assistance. The applicant in the case of Hummatov v. Azerbaijan was a formerly prominent political figure in Azerbaijan who participated in the First Nagorno-Karabakh war as a commander, but then declared an autonomous republic in the south of the country and himself as its president. The republic was then quickly squashed and the applicant who was the self-declared president of it was arrested and subsequently, convicted of a high treason[163]. When Azerbaijan was about to become the member of the CoE, one of the requirements imposed upon it was the release of the political prisoners shown in the list of political prisoners submitted by the CoE. The applicant was also mentioned in that list and he was subsequently released from prison in 2004[164]. However, he alleged that the conditions of his confinement were horrible which in his view, amounted to an act of ill-treatment by the Government. In this case, the report of the CoE CPT played an important role once again in relation to the conditions of confinement, both in the pre-trial and conviction period. The Court at first rejected the part of the complaint which entailed the period until 15 April, 2002, the date when the ECHR came into force in respect of the Republic of Azerbaijan. The Court considered it to be out of *ratione temporis* rule. However, as it was a continuing issue, the Court decided to declare it admissible in this part. Therefore, the application was completely declared admissible[165].

There were other arguments from the Government's side as to the admissibility of the application of the applicant. The most significant of them was that the Government alleged that the applicant did not exhaust the domestic remedies. However, the Court noted that the applicant lodged a civil complaint to redress the material and non-pecuniary damage that he had endured to no avail as the domestic courts did not even consider it on the ground of lack of jurisdiction. Moreover, in one of the proceedings he was absent and the domestic court did nothing to ensure his effective participation. Also, when the domestic courts rejected his claim, the decisions did not entail his name, but absolutely different name from that of the applicant. In the ECtHR's view, the applicant did as much as possible under the domestic law of the Republic of Azerbaijan

[163] ECtHR 9852/03 and 13413/04, Hummatov v. Azerbaijan, § 7-12.
[164] *ibid.* § 68.
[165] *ibid.* § 107.

to seek remedy for his allegedly violated rights. However, the remedies were ineffective, thus rendering his actions enough to exhaust the domestic remedies[166].

As to the allegations of ill-treatment, the Court found that the applicant did indeed suffer from various diseases prior to his confinement. However, he contracted tuberculosis at the Bayil Prison which was prescribed for the remand prisoners. The applicant underwent a medical examination both within the prison by the local doctors and outside of it by the doctors invited from abroad. The Government mostly relied on the opinions of local doctors and rejected the ones of the foreign doctors contesting their unprofessionalism. However, the Court rejected the Government's stance and cited the following drawbacks in the medical treatment rendered by the Government.

Firstly, despite there had been a relapse in the health of the applicant, the domestic authorities refused to acknowledge it until the intervention by the Helsinki Citizens Assembly. Secondly, the applicant was not provided with a systematic and comprehensive medical treatment up until he complained about it to the domestic authorities, although they were not unaware of the health problems of the applicant. It was not clear from the documents provided by the Government to the Court whether the medical treatment rendered to the applicant was continuous or whether the dosage of the medicaments prescribed were provided at all. The Court established that the fact that the applicant was merely seen by the doctor and was issued only the prescription of medication did not constitute an adequate medical treatment. Thirdly, the medical prescriptions contained recommendations for the applicant to improve his health situation. For instance, he was prescribed a specific diet and sitz baths. However, the Court established based on the independent reports issued by international NGOs that the conditions in the detention facilities did not render it possible for the applicant to comply with these recommendations. First of all, the food at the detention facilities was monotonous and of low quality, thus making it impossible for the applicant to maintain a specific diet. Second of all, sanitary conditions were horrible in the detention facilities that the applicant was kept. Therefore, he did not have any chances of complying with the recommendations concerning sitz bath exercises. Fourthly, the applicant could not receive the medication prescribed to him by the doctors of the detention facility and had to receive them through his relatives. Moreover, the conditions in the Gobustan prison (the prison where convicts for grave crimes are usually kept) did not let the applicant receive an adequate medical service. These factors, in the Court's view, amounted to a degrading treatment

[166] *ibid.* § 95, 96.

as they have diminished his human dignity[167]. The Court did not find torture. Based on the findings above regarding the effective remedies, the Court also found the violation of the Article 13.

The Court also found the violation of the Article 6 § 1 in respect of the applicant. As his public and fair trial would help him to prove the allegations of inhuman and degrading treatment, I consider it important for the purposes of this research. Moreover, it would aid me in proving my second hypothesis about the political motives behind ill-treatment cases in Azerbaijan, since the applicant in the present case is a former political prisoner. The Court substantiated its view on the following findings: 1) There were several postponements of the proceedings regarding the applicant's criminal trial. However, the Government did not submit enough evidence which would prove that the domestic authorities have done enough to inform the public about the dates and places of the postponed hearings. 2) As the proceedings did not take place in a normal courtroom, but in a specific room inside of the Gobustan Prison, without explaining the public how to reach that prison and what to do in order to get an access. Moreover, the domestic authorities did not provide any shuttle bus services. According to the applicant, his relatives had to hire a personal driver and pay large sums of money every time in order to get to the premises of the Gobustan Prison. 3) The domestic authorities could not substantiate the risks of a public trial and did not mention them in their interim decisions. All these factors amounted to the violation of the Article 6 § 1 as there was no public hearing and subsequently, no fair trial[168].

The case of Insanov v. Azerbaijan[169] is one of the most interesting and complicated cases as the Court found the violations of several articles of the Convention in relation to the degrading treatment that the applicant had received.

The applicant had been a Minister of Healthcare for over a decade before being arrested in 2005 on the charges of usurping the power along with other charges. He was sentenced to eleven years' of imprisonment with confiscation of property[170]. Firstly, the applicant complained that the conditions of his pre-trial detention amounted to inhuman and degrading treatment. The Court found that the cells of the Pre-trial Detention Facility no. 1 where the applicant was kept had 2,4, and 1,98 to 2,64 square meters of space per person respectively. They were overcrowded, with little to no privacy at all (the inmates could not use the toilet in private as

[167] *ibid.* § 113-117.
[168] *ibid.* § 146-152.
[169] ECtHR 16133/08, Insanov v. Azerbaijan.
[170] *ibid*. § 5, 7, and 37.

there was no wall between the toilet and their beds), and unhygienic. The Court took the applicant's long-term tenancy in the second cell also into consideration[171]. It found the violation of the Article 3 on this matter. The acts of the Government amounted to inhuman and degrading treatment.

The applicant also complained that his post-trial detention was also bad enough to be considered an inhuman and degrading treatment in respect of him. Although the Court established that the applicant had more freedom of movement in the Prison no. 13, it noted following drawbacks in the conditions of his detention there. The dormitory of the prison was not heated up until January 2009. There was no running water. As a result of low number of toilets, there were long queues to them. Number of showers was also scarce[172]. All these factors created feelings of anguish and inferiority in the applicant and were considered as humiliating and debasing in the Court's view. They led to degrading treatment of the applicant.

The applicant had lodged a civil claim before the domestic courts related to the conditions of his detention. However, his presence in the proceedings was not secured by the Government. The Court stated that the applicant had the first-hand knowledge about the conditions of his detention and the medical treatment that he had received there[173]. He was in a position to describe the conditions of detention and the level of medical treatment most accurately and answer the questions of the domestic authorities. The Government argued that transporting the applicant to the courtroom was not feasible for the domestic authorities. However, the Court noted that despite all hardships, the Government should have taken other measures to secure the applicant's presence in the civil court proceedings such as holding the hearings in the penal establishment where the applicant was serving his sentence[174]. Thus, the Court found the violation of the Article 6 § 1 in respect of the civil proceedings related to the applicant's complaints on the effectiveness of medical treatment and the conditions of his detention.

The Court found the violation of the Article 6 § 3 (d) as the applicant did not have any chance to question the experts who composed the reports that were crucial in the applicant's conviction. His conviction was mostly based on the three reports issued by experts working for several governmental bodies at the time. Their reports indicated that the applicant had embezzled large

[171] *ibid.* § 115-118.
[172] *ibid.* § 123-126.
[173] It is important to note that although the applicant also complained about the ineffectiveness of the medical treatment he had received in the detention facilities, the Court did not find a violation of the Article 3 on that matter.
[174] Insanov case, *op. cit.*, § 146.

amounts of money from the state budget and invested them into his personal business ventures. The applicant argued that those reports had many contradictory statements, but the domestic authorities rejected his petitions on questioning the experts who had drawn up these reports[175].

The violation of the Article 6 § 3 (c) was also found. In particular, the Court noted that the accusations put forward to the applicant were so severe, that he needed an effective and skilled legal assistance. However, his lawyers did not have any chances of consulting with their client under confidential circumstances. The consultations usually took place in the courtroom with a little distance between the prosecutor who was the opposing party in the case and the applicant and his lawyer. During his initial arrest, the applicant was kept in the detention facility of the MNS. However, the access to the building of the MNS was restricted during non-working days. Moreover, the trials of the applicant were conducted on a daily basis and lasted the whole day. These circumstances made it impossible for the lawyers to meet the applicant and consult with him confidentially. Thus, the applicant had no opportunity to prepare his defence, to ask crucial questions or give instructions to his lawyers[176].

Lastly, the Court found the general violation of the Article 6 § 1 in conjunction with the Articles 6 § 3 (c) and (d). The Court also recommended the Government to consider re-opening the case in accordance with the domestic law (CCpR) which provides for a review of domestic criminal proceedings by the Plenum of the Supreme Court and remittal of the case for re-examination, if the ECtHR finds a violation of the Convention[177].

In the case of Aliyev v. Azerbaijan[178], the applicant was confined in a cell with a 1,1 square meters of space for him. Moreover, he did not have an access to outdoor exercise, his cell was not ventilated and lacked sanitary facilities which amounted to a degrading treatment thus establishing the violation of Article 3[179]. The Court also found the violation of Article 5 § 1 citing the absence of "reasonable suspicion". Articles 5 § 4 and 8 were found to be violated as the domestic courts openly endorsed the prosecuting authorities' findings without establishing the facts on its own and the intervention into the office and house of the applicant did not possess any legitimate aim[180]. Lastly, the Court found the violation of the Article 18. Alongside the lack of reasonable suspicion and legitimate aim, the Court also took into consideration the

[175] *ibid.* § 161-164.
[176] *ibid.* § 167-169.
[177] *ibid*. § 195.;
[178] ECtHR 68762/14 and 71200/14, Aliyev v. Azerbaijan.
[179] *ibid.* § 125.
[180] *ibid.* § 172, 187.

Government officials' previous statements portraying the applicant as a "foreign agent" and a "part of the fifth column", the chilling effect that the applicant's arrest had created at the time, and a fact that the applicant's arrest coincided with the wider crackdown on civil society in the summer of 2014[181]. The violation of this right was found in conjunction with Articles 5 and 8. The Court, under Article 46, urged the Government to secure *restitutio in integrum* – restoration of original conditions (such as the applicant's release and acquittal)[182].

The case of Natig Jafarov v. Azerbaijan[183] is another case where the Court found the violation of Article 18 alongside with the violation of Article 3. A member of the opposition party called "Republican Alternative" which was actively involved in the referendum campaign[184]. The applicant's arrest constituted violations of Articles 5 § 1 and 5 § 4. His confinement in a metal cage during the court proceedings automatically amounted to a violation of Article 3 as an act of degrading treatment. In relation to the violation of Article 18, the Court noted that the applicant was an opposition politician actively participating in the referendum campaign, arrested during its active phase, and released after his affiliated party stopped its participation in the campaign. It was aimed towards aborting the signature collection process initiated by the applicant's party. This act had discouraged the opposition supporters from actively participating in an open political debate. This restriction had affected the whole essence of democracy in Azerbaijan[185].

2.1.4. Non-refoulement cases.

The first case in this group is Garayev v. Azerbaijan[186]. This case is about non-refoulement which is an essential part of the values protected under the Article 3. According to this principle, if someone risks of being tortured in the country that he or she is being deported to, then his extradition should be stopped. Although this case and all other non-refoulement cases against Azerbaijan do not directly show systemic and endemic issues related to ill-treatment that are persistent in Azerbaijan, they manifest the lack of procedural safeguards against extradition to a country where a person can be subjected to ill-treatment. The Government of Azerbaijan had accepted mere assurances given by the receiving states in this group of cases which shows that procedural safeguards regarding extradition are feeble.

[181] *ibid.* § 208-215.
[182] *ibid.* § 227, 228.
[183] ECtHR 64581/16, Natig Jafarov v. Azerbaijan.
[184] *ibid.* § 12.
[185] *ibid.* § 66-71.
[186] ECtHR 53688/08, Garayev v. Azerbaijan.

In this case, Garayev – an Uzbek national of Azerbaijani origin was about to be extradited to Uzbekistan for the crime he was allegedly accused of perpetrating. As background information, the applicant's family, including himself, were accused of committing a grave crime (murder) in Uzbekistan. As the applicant was an ethnic Azeri, he immigrated to Azerbaijan and lived there for a while. However, he was then arrested and a decision on his extradition to Uzbekistan was issued. The Court issued an interim measure indicating that the applicant should not be extradited to Uzbekistan until further notice[187].

In its judgment on the merits, the Court took into consideration the reports issued by the UN CAT in respect of Uzbekistan. The reports contained a lot of information on the endemic and systematic ill-treatment present in the detention facilities in Uzbekistan. Substantiating on this, the Court found the violation of the Article 3 establishing that the applicant would be exposed to ill-treatment had he been extradited to Uzbekistan[188].

The Court also noted that the domestic courts had failed to take into consideration the possibility of the applicant being ill-treated in Uzbekistan while issuing a decision on his extradition. In this respect, they had also ignored all the arguments of the applicant[189]. Therefore, the Court found the violation of the Article 13.

The Court also found the violation of the Article 5 § 1 (f) of the Convention citing the failure of domestic authorities to protect the applicant from arbitrary detention. Moreover, the Court cited the problem of "quality of law" in respect of this violation. In detail, the Court noted that the CCpR did not contain any limit on the detention periods regarding the issues on extradition. In other words, the detainees detained with the purpose of extradition did not have any time limit on their detention period which made it impossible for them to appeal against the decision of detention[190]. The relevance of this statement lies on the fact that provided he was released in due time, the applicant would have escaped extradition to the country where he might have been subjected to torture. Moreover, if he had a chance to appeal against the decision of detention, he might have been set free by the authorities of Azerbaijan which would abort his extradition. Lastly, the Court found the violation of the Article 5 § 4 establishing that the applicant did not have any procedure at his disposal for a judicial review of the lawfulness of his arrest[191].

[187] *ibid.* § 4.
[188] *ibid.* § 75.
[189] *ibid.* § 84.
[190] *ibid.* § 99-101.
[191] *ibid.* § 107.

The case of Chankayev v. Azerbaijan[192] is another case about the non-refoulement issues. The applicant was an ethnic Chechen who fought against the armed forces of the Russian Federation during the wars in Chechnya. Moreover, the Russian authorities suspected him of the bombings in the city of Kaspiysk in 2002. In order to abscond the responsibility, the applicant fled to Azerbaijan and lived here for some time before being arrested for extradition.

The Court took into consideration the international reports as it did in the case of Garayev. The international reports indicated that the problem of systematic and endemic ill-treatment still persists in many parts of Russia, especially, in the Northern Caucasus. However, the applicant had already been convicted. He just fled the execution of the judgment issued against him. Therefore, in the case of extradition back to Russia, he would be put directly into prison. Moreover, he would serve his sentence not in a prison located somewhere in Northern Caucasus, but far away from there somewhere in the central regions of the Russian Federation. According to the international reports, there were no serious structural problems related to the ill-treatment of the prisoners in the post-conviction facilities. As the applicant would not stand before any prosecuting authority such as police or national security bodies, would not be subjected to police questioning, risk of him being ill-treated did not exist[193]. Therefore, the Court did not find any violation of the substantive limb of Article 3.

The Court took into consideration the fact that the domestic authorities rejected the allegations of possible ill-treatment of the applicant in Russia and only considered the assurances given by the Russian authorities that the applicant would not be subjected to ill-treatment. In relation to this fact, the Court also found the violation of Article 13 in conjunction with Article 3[194].

Tershiyev v. Azerbaijan[195] is another case on the non-refoulement issues. The applicant was another Chechen fighter who fought during the Wars in Chechnya. The applicant was subject to a temporary extradition.

The Court did not find the violation of Article 3 in its substantive limb as the applicant was not a prominent figure during the war and the list of persons persecuted by the Russian authorities submitted by the Chechen Refugee Council could not be considered a *prima facie* evidence as the people in the list did not share similarities with the applicant. Moreover, as Russia was and

[192] ECtHR 56688/12, Chankayev v. Azerbaijan.
[193] *ibid.* § 76-81.
[194] *ibid.* § 94.
[195] ECtHR 10226/13, Tershiyev v. Azerbaijan.

still is a member of the CoE, it had already some obligations under the ECHR and the Court expected it to comply with these obligations[196].

The Court, however, found the violation of Article 13 in conjunction with Article 3. The first instance court refused to examine the allegations of the applicant citing the lack of proof. However, in the Court's view, despite lack of evidences, the authorities still carry an obligation to launch an effective investigation into the allegations of potential ill-treatment in the case of extradition[197].

2.1.5. Cases where the ECtHR found only the violation of the procedural limb of Article 3.

In the case of Jannatov v. Azerbaijan[198], the Court did not find the violation of the substantive limb of Article 3, but found that of its procedural limb. In particular, the Court noted that despite the applicant lodged two complaints to the Prosecutor General and one complaint to the MIA, none of these bodies launched any criminal investigation. The same complaint was considered by the domestic courts. The Assize Court only heard the police officers who denied ill-treatment, whereas the Court of Appeal and the Supreme Court basically rejected the applicant's claims. Taking into account the detailed nature of the applicant's allegations, it was enough to launch a criminal investigation. Moreover, the lawyer of the applicant challenged the forensic report. The domestic authorities did not hear any witnesses in favour of the applicant without explaining the reasons[199]. With regards to the substantive limb, the Court did not find its violation, although linked it to the Government's failure to instigate an effective investigation into the applicant's allegations[200].

In the case of Igbal Hasanov v. Azerbaijan[201], the Court did not find the violation of the substantive limb of Article 3 citing the belated actions of the domestic authorities[202]. However, the Court found the violation of its procedural limb. The Court noted that despite the applicant informed the investigator with detailed information about the ill-treatment, the latter did not launch a criminal investigation. Neither the Deputy General Prosecutor, nor the courts took any

[196] *ibid.* § 56-62.
[197] *ibid.* § 73.
[198] ECtHR 32132/07, Jannatov v. Azerbaijan.
[199] *ibid.* § 50, 51, and 53.
[200] *ibid.* § 61.
[201] ECtHR 46505/08, Igbal Hasanov v. Azerbaijan.
[202] *ibid.* § 49.

action. No forensic examination was issued, no potential witness was questioned including the applicant himself, his cellmates, the alleged perpetrators, or any other witnesses[203].

The case of Uzeyir Jafarov v. Azerbaijan[204] is about a journalist being allegedly beaten by state agents. Although the Court did not recognize the violation of the substantive limb of Article 3, it noted that the failure of domestic authorities to launch an effective investigation in a timely manner led to it[205].

By contrast, the Court found the violation of the procedural limb citing several reasons. Firstly, the Court noted that the investigation into the applicant's allegations were not independent as it was conducted by the same police station where the applicant was allegedly ill-treated. Secondly, there was no identity parade, face-to-face confrontation, and the questioning of the applicant's colleagues as witnesses which could lead to a better investigation into the matter. Thirdly, the police office did not even claim non-involvement of the police officer who, according to the applicant, ill-treated him. Instead, the police office mentioned another police officer and claimed his non-involvement. Fourthly, the applicant was not informed of the decision of the investigator to suspend the investigation. Fifthly, the MIA described the attack as sabotage 10 days after the actual incident. As the MIA had a superior authority over the police station which was investigating the applicant's allegations, the desire to prove the lack of involvement from the side of the police rather than discovering the truth was clear[206].

Mehdiyev v. Azerbaijan[207] is another case on the beating of the journalists. The Court found the violation of the procedural limb of Article 3 citing the detailed nature of the applicant's ill-treatment allegations. Moreover, the local NGOs raised the applicant's issue several times along with the large media coverage ongoing in the country. Despite all of this, no investigation was carried out. No forensic examination or questioning of the applicant, alleged perpetrators, and other possible witnesses were conducted[208]. Lastly, despite the Court did not find the violation of the substantive limb, it noted that the reason for this was the failure of the domestic authorities to launch and effective investigation into the allegations on time[209].

[203] *ibid.* § 37-40.
[204] ECtHR 54204/08, Uzeyir Jafarov v. Azerbaijan.
[205] *ibid.* § 61.
[206] *ibid.* § 49-53.
[207] ECtHR 59075/09, Mehdiyev v. Azerbaijan.
[208] *ibid.* § 64-68.
[209] *ibid.* § 75.

In the case of Satullayev v. Azerbaijan[210], the Court found the violation of Article 3. The Court found the following shortcomings in respect to procedural limb: 1) Although the applicant's ill-treatment was acknowledged, the compensation was awarded to him and no one was punished for the ill-treatment; 2) No face-to-face confrontation was conducted between the applicant and police officers. No identity parade was organized either; 3) Police officers' statements were considered more credible than the submissions of the applicant without any explanation; 4) Some of the police officers were officially reprimanded for the applicant's ill-treatment. However, their version of events was later accepted without any questioning. These constituted the violation[211].

2.1.6. Conclusion.

Taking into consideration all the findings of the Court in respect of all aforementioned cases, I would like to cite the following general issues that are endemic in the infliction of torture in Azerbaijan: 1) The investigations into ill-treatment complaints are generally not independent as they are conducted by the same organizations whose agents have allegedly ill-treated the applicants; 2) The investigations into ill-treatment complaints are not effective as investigators usually neglect conducting investigative operations on time (sometimes, they do not conduct them at all); 3) Belated forensic examinations which lead to disappearing or healing of the wounds inflicted by ill-treatment; 4) The Government, usually, brings up bogus and unimaginable arguments regarding the sources of wounds and injuries on the applicants' bodies; 5) The applicants do not have the access to the case materials and are not provided with the copies of important decisions regarding investigations; 6) The domestic courts rely heavily on the findings of investigation rather than considering the applicants' evidences and finding relevant facts on their own (especially, the questioning of the witnesses is a big problem); 7) The conditions in the detention facilities in Azerbaijan are below international standards; 8) In the cases related to non-refoulement, the Azerbaijani authorities rely heavily on the assurances given by the receiving states that the extradited persons will not be subjected to ill-treatment. Lastly, in some cases, the ECtHR did not found the violation of the substantive limb of Article 3 citing the failure of Azerbaijani Government to react in time to the allegations of the applicants and launch an effective investigation.

[210] ECtHR 22004/11, Satullayev v. Azerbaijan.
[211] *ibid.* § 43-45.

2.2. Follow-up Procedures and Implementation of Decisions

In this section, I will only cover the implementation of the aforementioned decisions in the parts related to the violation of Article 3, both in its substantive and procedural limbs.

The CoE CM, which has a supervisory role over the implementation of the ECtHR judgments by member states, has grouped the aforementioned cases for their identical issues. The Mammadov (Jalaloglu) group of cases includes the namesake case, Layijov, Jannatov, Igbal Hasanov, Uzeyir Jafarov, Mehdiyev, Emin Huseynov, Hilal Mammadov, Pirgurban, and Mustafa Hajili cases. This group of cases has one common problem – the infliction of ill-treatment in custody. According to the Committee, the just satisfaction awarded by the Court has been paid for all applicants. However, it is unclear whether the applicant in the Hilal Mammadov case also received the default interest rate payments.

The Government has published the reports of the CoE CPT which stated several shortcomings in the Government's dealing with ill-treatment, such as, systemic and endemic nature of ill-treatments and impunities for them, ineffectiveness of investigations into such allegations, and inoperativeness of the safeguards against ill-treatment in practice[212]. Moreover, it has stated that the relevant authorities and professionals have been provided with trainings and instructions issued by the Supreme Court which encapsulates the norms regarding the manner in which ill-treatment allegations should be treated by lower courts[213]. However, the Government has not provided the Committee with detailed information[214].

However, the Committee has expressed its regret in the fact that the Government has failed to submit information on the fresh investigations launched in respect of the ill-treatment of applicants. It is important to note that in the implementation process of Layijov case, the applicant has been acquitted by domestic courts, but it has nothing to do with the proceedings related to the allegations of ill-treatment as no perpetrator has been identified and prosecuted as of 2021.

The cases concerning Muradova group (Muradova, Rizvanov, Najafli, and Tahirova) are mainly about the ill-treatment received during the dispersal of opposition demonstrations and lack of

[212] CM Mammadov (Jalaloglu) v. Azerbaijan, 34445/04, Date of Judgment: 11.01.2007. Judgment became final: 11.04.2007. CM/Del/Dec(2020)1377bis/H46-4
[213] *ibid.*
[214] *ibid.*

effective investigations into that[215]. The status of implementation regarding this group of cases is identical to that of Mammadov (Jalaloglu) group.

The Garayev group concerns the cases related to non-refoulement issues (Garayev, Chankayev, and Tershiyev)[216]. As regards to the individual measures, the applicant in the first case has been released and the decision on his extradition has been lifted by the Prosecutor General. As regards to the general measures, his case was translated into Azerbaijani, published, and disseminated among prosecutors. A legislative amendment regarding the rights of detainees with a view to extradition is reportedly, "under preparation"[217].

The Hummatov group includes the cases of Hummatov and Yunusova and Yunusov[218]. Lack of adequate medical treatment is the main point of these cases. In respect of the applicant in the case of Hummatov, the just satisfaction has been paid, and the applicant has been pardoned and freed from prison. No information has been submitted regarding the Yunusova and Yunusov case[219].

The Insanov group of cases involves two cases (Insanov and Rzakhanov) and concerns the conditions of detention and/or imprisonment[220]. The applicant in the Insanov case has been convicted for the second time in 2016 and transferred to another prison facility, which according to the Government, has good conditions. The applicant refutes this without giving much detail. As regards to the applicant in the case of Rzakhanov, no information has been provided by the Government[221].

The case of Mammadov and others v. Azerbaijan has been included in the group of cases under the name of Mikayil Mammadov as they are all about the death of the applicants under confinement[222]. The Mammadov and others case is significant as it contains the violation of

[215] CM Muradova v. Azerbaijan 22684/05. Date of Judgment: 02.04.2009. Judgment became final: 02.07.2009. CM/Del/Dec(2020)1377bis/H46-4
[216] CM Garayev v. Azerbaijan 53688/08, Date of Judgment: 10.06.2010. Judgment became final: 10.09.2010.
[217] *ibid.*
[218] CM Hummatov v. Azerbaijan, 9852/03. Date of Judgment: 29.11.2007. Judgment became final: 29.02.2008.
[219] *ibid.*
[220] CM Insanov v. Azerbaijan, 16133/08. Date of Judgment: 14.03.2013. Judgment became final: 14.06.2013. CM/Del/Dec(2019)1340/H46-3
[221] *ibid.*
[222] CM Mikayil Mammadov v. Azerbaijan, 4762/05, Date of Judgment: 17.12.2009. Judgment became final: 17.03.2010. CM/Del/Dec(2020)1377bis/H46-4

Article 3 as well. However, no information on the subsequent effective investigation has been submitted by the Government[223].

There is no information at all regarding the remainder of the cases. Those cases are rather new; the judgments have been rendered by the ECtHR recently. Given that the last reports of CoE CPT and UN CAT were issued in 2017 and 2015 respectively, these issues have not been covered by any international supervisory body.

In conclusion, it is visible from the CoE CM cases that the Government of Azerbaijan is trying to avoid the full implementation of ECtHR judgments. It just awards the just satisfaction, instead of complying with other measures such as reopening of domestic cases, revealing the perpetrator and reprimanding them.

2.3. Azerbaijani cases in the UN Treaty Bodies

There are eight cases at the UN CAT seven of which consider the issue of refoulement in respect of Azerbaijani nationals living in Sweden[224]. In other words, these cases are not against Azerbaijan, but against Sweden and entail several arguments put forward by the applicants that challenge the situation regarding ill-treatment in Azerbaijan. The one remaining case is a case of a Turkish national of Kurdish origin who objected the Azerbaijani Government's decision on her refoulement back to Turkey.

In none of the cases against Sweden which envisaged the refoulement of Azerbaijani nationals, the Committee held the violation of the Article 3 of the UN CAT. In all of these cases, the applicants submitted documents concerning their membership to well-known opposition parties in Azerbaijan and several forensic reports, which according to them, confirm their previous ill-treatment claims. In the light of all these documents, the applicants argued that their extradition to Azerbaijan would lead to them being subjected to ill-treatment (particularly, torture). However, the Committee found that despite the applicants were members of prominent

[223] *ibid.*
[224] UN CAT CAT/C/37/D/265/2005 A. H. v. Sweden, accessible at: https://www.refworld.org/cases,CAT,47975afec.html; UN CAT CAT/C/38/D/296/2006 E. V. I. v. Sweden, accessible at: https://www.refworld.org/cases,CAT,47975b031d.html; UN CAT CAT/C/40/D/301/2006 Z.K. v. Sweden, accessible at: https://www.refworld.org/cases,CAT,518ca74d4.html; UN CAT CAT/C/40/D/309/2006 R. K. et al. v. Sweden, accessible at: https://www.refworld.org/cases,CAT,518ca5e54.html; UN CAT CAT/C/41/D/306/2006 E.J. et al. v. Sweden, accessible at: https://www.refworld.org/cases,CAT,4a939b432.html; UN CAT CAT/C/41/D/332/2007 M.M. et al. v. Sweden, accessible at: https://www.refworld.org/cases,CAT,4a939e3a2.html; UN CAT CAT/C/38/D/270 & 271/2005 E. R. K. and Y. K. v. Sweden, accessible at: https://www.refworld.org/cases,CAT,47975affc.html.

opposition political parties in Azerbaijan, they were not significant members of those parties and their activities could not draw attention of authorities. Moreover, the Committee noted that the applicants did not risk getting tortured at the time of the proceedings, although some of them were subjected to ill-treatment in the past. Therefore, the Committee did not establish the violation of Article 3. In the case of Elif Pelit v. Azerbaijan, the applicant – a Turkish national was about to be extradited to Turkey which would in her opinion, expose her to ill-treatment. The Committee stated that the Government did not consider the fact that the applicant was already recognized as a refugee in Germany. Moreover, the state-party relied heavily on assurances provided by Turkey[225]. The Committee found the violation[226].

The aforementioned findings of the UN CAT do not exclude the political nature of violation of right to prohibition of torture. Some of the judgments of ECtHR clearly indicate political motivations, such as the violent dispersal of opposition rallies (Tahirova, Mahaddinova, Najafli, Rzakhanov) or ill-treatment of opposition or human rights activists (Mammadov (Jalaloglu), Aliyev, Hummatov, Ibrahimov and Mammadov, Natig Jafarov).

[225] This heavily resembles the aforementioned ECtHR non-refoulement cases. See *supra*, p. 46-49.
[226] UN CAT CAT/C/38/D/281/2005 Elif Pelit v. Azerbaijan, accessible at: https://www.refworld.org/cases,CAT,47975b01c.html

CHAPTER III. ANALYSIS OF DOMESTIC CASES AND ADMINISTRATIVE PRACTICE OF AZERBAIJAN

3.1. Analysis of Domestic Cases in the Light of International Law

Aside from the aforementioned cases, there are ones which had not been considered by the ECtHR. These are rather obscure cases, although the domestic media outlets have covered these cases repeatedly. Moreover, they were covered in the official reports published by embassies or ministries of foreign countries, mostly by those of USA and Netherlands[227]. They were covered in the reports of NGOs as well[228]. Therefore, in this section, I will analyse them mostly relying on these sources.

To begin with, in November 2015, the Azerbaijani law-enforcement bodies conducted a special operation in the Nardaran village of Baku which was infamous for its residents' radical Islamist views. This operation left several villagers and two police officers dead. Following the operation, some of the villagers were arrested which included prominent religious clerics widely known in Azerbaijan. The detainees were allegedly severely tortured. The leader of the MUM, an Islamist Movement in Azerbaijan, Taleh Bagirzade was one of the detainees allegedly tortured. Bagirzade was given 20 years of imprisonment sentence. Even after the conviction, he was beaten on some occasions[229].

Other members of the Islamic Movement were also arrested and allegedly tortured. They were also given harsh imprisonment sentences. According to the news reports, their ill-treatment continues up to this day as they are frequently put into punishment cells and beaten. For instance, one of the active members and the deputy chairman of the MUM, Abbas Huseynov have also been sentenced to 20 years' imprisonment and tortured, before and after the conviction. The NGO report submitted by the IPD, a local NGO, provides details on Huseynov's ill-treatment:

[227] See e.g. Embassy of the United States of America in Azerbaijan. Azerbaijan 2019 Human Rights Report. 12.03.2020. accessible at: https://az.usembassy.gov/hrr_2019/; Ministry of Foreign Affairs of Netherlands. General Country of Origin Information Report for Azerbaijan. July 2020. p. 88.
[228] See e.g. International Partnership for Human Rights (IPHR), Human Rights Club (HRC), Global Diligence, Truth Hounds, Civic Solidarity. Azerbaijani government crackdown in Ganja: extrajudicial killings, torture, arbitrary detention, unfair trials and unlawful restrictions on the freedom of assembly. 2020.
[229] Contribution to the List of Issues Prior to the Submission of the Periodic Report of Azerbaijan By Institute for Peace and Democracy (IPD), International Partnership for Human Rights (IPHR), World Organisation against Torture (OMCT). 63rd Session of the Committee against Torture. January 2018. p. 3.; ibid. p. 4; Amnesty International Public Statement. AI Index: EUR 55/5633/2017, 06.02.2017. Azerbaijan: Torture and Travesty of Justice in Nardaran Case. p. 3.

> "[…] he was handcuffed, dragged along the floor and kept in the scorching sun. When he complained, he was beaten with a truncheon and placed in a punishment cell, which was filthy and unsanitary with vermin coming from the toilet and bed sheets that were black from dirt. Huseynov further reported having allegedly been beaten in the stomach and face by a prison officer, being tied to an iron post for three hours in the sun, and repeatedly placed in the punishment cell. When he complained about the prison conditions to the prison director, this official allegedly replied that "this is Gobustan, a place where rights end." Huseynov was then allegedly pushed down on the floor and beaten on his head with a club. After this incident, Huseynov was again brought to the punishment cell where he was handcuffed. According to his lawyer, Huseynov had injuries on his back, legs and knees and had difficulties walking and sitting as a result of this incident."[230]

Huseynov's case was also mentioned by the PACE in their addendum dated October 10, 2017, where the PACE expressed its concern regarding the ill-treatment of prisoners, in particular, Abbas Huseynov[231].

It is important to note that several detainees and convicts involved in this case have lodged applications to the ECtHR, but the judgments have not been rendered yet. The cases are in the stage of communication.

Another widely discussed and covered case of systematic torture is the so-called "Ganja case". When the mayor of the city of Ganja, the second largest city of Azerbaijan was severely injured by a gunshot in July 2018, the perpetrator was caught and allegedly, heavily tortured. Even his pictures apparently depicting him wounded and covered in blood, were circulated in the internet[232]. Moreover, the demonstration taking place a week after this event left two police officers dead, as a result of which a special operation was conducted by the law-enforcement and intelligence bodies. One of the perpetrators was found and killed[233]. The demonstrators were arrested and according to themselves and their family members, tortured[234].

[230] Contribution to the List of Issues 2018. *op. cit.*, p. 3.
[231] Council of Europe Parliamentary Assembly. The functioning of democratic institutions in Azerbaijan. Doc. 14403 Add. 10 October, 2017. p. 3, § 16. Accessible at: https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24062&lang=en
[232] General Country of Origin Information Report for Azerbaijan 2020. *op. cit.*, p. 88.
[233] Anonymous. Azerbaijani officers kill suspect in police slayings. RFE/RL. 13 July, 2018. accessible at: https://d9mc3ts4czbpr.cloudfront.net/ru/article/azerbaijani-officers-kill-suspect-in-police-slayings/
[234] Azerbaijani government crackdown in Ganja 2020. *op. cit.*, p. 14-15, § 32-36.

Another shocking case regarding torture was recorded in relation to a certain group of military servicemen in the Azerbaijani army. In 2017, a group of former and current military servicemen (including soldiers and high ranking officials) were arrested and brought to the premises of an old military barrack located in the city of Terter in Azerbaijan and tortured there. They were accused of military espionage in favour of the Armenian military intelligence services. Some of the arrestees died as a result of severe acts of torture, and some of them got severely injured and later on, received harsh imprisonment sentences. This case is widely known as "Terter case"[235].

One of recent cases which included allegations of torture happened in the city of Gazakh located in the northwest of Azerbaijan. A resident of the city was called to the local police station for questioning and was about to be immediately taken to the hospital. However, when the ambulance arrived, the person was already dead. In a photo leaked to internet the next day, the person was seen dead with a lot of bruises on his face, legs, feet, arms, and torso. According to the MIA, an investigation was launched into his death and the guard on duty at the day of his death along with a police major employed by the police station were arrested. The police major was convicted to a suspended sentence of two years and ten months with a deprivation of right to hold national and local government positions[236].

Most of these cases are generally similar to the ones I overviewed above in the section on the Azerbaijani cases at the ECtHR. However, the acts of torture are much more severe in these cases and cannot be justified by any means. The possible violations are also identical to those of the Azerbaijani ECtHR cases, as the acts of ill-treatment against the arrestees are easy to establish as they have been widely documented through the local media[237] and NGO reports, and there are a lot of graphic pictures depicting the arrestees being tortured. Moreover, no effective investigation has been carried out in respect of the ill-treatment allegations. The domestic authorities have sentenced several people in respect of the "Terter case", however, according to

[235] Council of Europe CPT report 2017. *op. cit.*, p. 14, § 23.
[236] Azerbaijan Human Rights Report 2019. *op. cit.*
[237] Anonymous. The action of the relatives of the defendants in the "Terter case". Turan. Baku. 05.02.21. accessible at: https://www.turan.az/ext/news/2021/2/free/Social/en/1094.htm; Anonymous. In Azerbaijan, relatives of torture victims voice details of Terter case. Caucasian Knot, 28.11.2019. accessible at: https://www.eng.kavkaz-uzel.eu/articles/49238/; Durna Safarova. Azerbaijan: One year on, Ganja events remain unexplained. Eurasianet. 26.08.2019. accessible at: https://eurasianet.org/azerbaijan-one-year-on-ganja-events-remain-unexplained; Anonymous. Azerbaijani Court tightens regime for a man sentenced in "Nardaran case". Caucasian Knot. 01.10.2018. accessible at: https://www.eng.kavkaz-uzel.eu/articles/44574/.

the family members of some of the tortured servicemen, most of those convicted in respect of the torture allegations have been subsequently pardoned and released[238].

It is important to note that the events related to the "Terter military espionage case" were covered in the CoE CPT's state report published in 2017. Using disused army bases as a place of torture has been mentioned repeatedly throughout the report[239].

3.2. Analysis of the Administrative Practice in the Light of International Law

There are numerous drawbacks in the administrative practice related to the ill-treatment cases in Azerbaijan. One of them is the lack of access to a lawyer of the person's personal choosing. It is indeed one of the most important safeguards against ill-treatment. If a detained person gets ill-treated, the first person that can assist him in lodging complaints to competent higher authorities is his lawyer. Depriving him of access to his lawyer would diminish his chances of getting proper remedy.

The situation regarding lawyers is disturbing. Several highly qualified independent lawyers have been disbarred from the ABA and they could no longer defend anyone in the domestic proceedings. Although lawyers who are not members of the ABA have never been allowed to represent someone in criminal proceedings in Azerbaijan, they could do so with regards to civil proceedings. However, in 2017, the independent lawyers who were not members of the ABA were deprived of this right as the new amendments made to the CCP prohibited non-members of the ABA representing someone in civil proceedings[240]. The members of the *Milli Mejlis* (the Parliament) who supported the adoption of this law (the vast majority of the Parliament) argued that this law would improve the level of legal assistance in the country since non-lawyers who were independently functioning as legal counsels damaged the reputation of legal profession by writing unprofessional lawsuits to the courts and rendering ineffective legal assistance[241]. Practical and independent lawyers, on the other hand, are professional lawyers since they hold a law degree. However, they are not members of the ABA. Their elimination from the legal assistance process undermines the effectiveness of legal assistance in Azerbaijan.

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[238] Maharram Zeynalov. *"Ol ve ya etiraf et". Azerbaycan ordusunda ermeni casuslarini isgence vermekle axtariblar. Terter isi* ["Confess or die". Armenian spies were sought by inflicting torture in the Azerbaijani army. Terter case]. BBC Azeri. 27.11.2019. accessible at: https://www.bbc.com/azeri/azerbaijan-50562303.
[239] Council of Europe CPT report 2017. *op. cit.*, p. 14, § 23.
[240] The Law No. 853-VQD on the amendments to the Code of Civil Procedure of the Republic of Azerbaijan. Adopted 31.10.2017, e.i.f. 01.01.2018.
[241] Sitting of *Milli Mejlis*. 31.10.2017. available at: https://www.meclis.gov.az/news.php?id=2066&lang=az

Similarly, some highly qualified and famous independent lawyers in Azerbaijan were not admitted to the ABA. The case of Hajibeyli and Aliyev v. Azerbaijan[242] is a brilliant example of that. The ECtHR found the violation of Article 10 in this case, considering the refusal of the ABA to admit the applicants to the Association infringed their freedom of expression. The applicants frequently wrote critical articles about the work of the ABA which led to dismissal of their applications. The case of Bagirov v. Azerbaijan[243] gives a clear example of unlawful disbarment. The applicant criticized the judicial system in Azerbaijan for which he was disbarred from the ABA. According to the Government, the applicant's remarks "had cast a shadow over the State and statehood and tarnished the reputation of the judiciary". The Court found the violation of Articles 10 and 8 in this case[244].

Even after the amendments in 2017, several highly qualified lawyers who were part of the ABA at the time were disbarred. Today, there are only a few lawyers inside of the ABA who are not pro-government, but their activities are heavily restricted by the Government at all costs[245]. Moreover, the findings of the ECtHR in cases such as Ibrahimov and Mammadov, Insanov, Aliyev, Hajibeyli and Aliyev, Bagirov show that the Government's actions to keep some lawyers out of the ABA, to restrict their access to their clients, or to arrest and convict them had political motives.

Additionally, the number of the lawyers in Azerbaijan is very low *vis-à-vis* the number of the population. For instance, in the aforementioned Gazakh city of Azerbaijan there are only two lawyers functioning, while the number of population is nearly 100000 people. On the other hand, in the second largest city of Azerbaijan – Ganja, there are only 23 lawyers functioning, while there are almost half a million people living[246].

Aside from the poor level of legal assistance, punishment of human rights defenders also prevails. The UN CAT has cited it in its 2015 concluding observations. The Committee expressed its concern over the fact that some of the human rights defenders had been imprisoned, and even exposed to ill-treatment. Some of them were denied adequate medical treatment in

[242] ECtHR 6477/08 and 10414/08, Hajibeyli and Aliyev v. Azerbaijan.
[243] ECtHR 81024/12 and 28198/15, Bagirov v. Azerbaijan.
[244] *ibid*. § 27.
[245] Anonymous. Justice under threat in Azerbaijan as Bar Association bans yet more independent lawyers. International Partnership for Human Rights. 16.05.2018. available at: https://www.iphronline.org/justice-under-threat-in-azerbaijan-as-bar-association-bans-yet-more-independent-lawyers.html
[246] Anonymous. *95800 nefer Qazakh ehalisini 2 vekil mudafie etmelidir* [2 Lawyers should defend 95800 residents of Gazakh]. BBC News Azeri. 08.11.2017. available at: https://www.bbc.com/azeri/azerbaijan-41920514

relation to their professional activities[247]. The Committee also noted that these actions against the human rights defenders were conducted as a form of punishment for implementation of projects without a registered grant agreement, as well as the acceptance of donations. Human rights NGOs and their leaders have been punished through the dissolution of non-governmental organizations, the imposition of financial penalties, the freezing of assets and the handing down of heavy prison sentences[248]. This might be an indicator of the political motivations behind the ill-treatment of human rights defenders.

Alongside the lack of access to effective legal assistance, the problem of ineffective investigations also prevails. Even in the ECtHR cases mentioned in the previous chapter, it was clear that the main problem regarding ill-treatment is not that it exists in the law-enforcement system of Azerbaijan, but it is not investigated effectively. There were some cases, such as Layijov or Pirgurban, where the domestic authorities had acknowledged the act of ill-treatment against the applicants, but no effective investigation into the matter were conducted and no one was punished for it. It is astonishing that the aforementioned conviction of perpetrators in the "Tartar military espionage case" and the ill-treatment case transpired in Gazakh which resulted in the death of the arrestees were two of the few instances when the alleged perpetrators (or at least, a group of them) had actually been tried and convicted for their actions. It is still unclear whether the investigations into the allegations were actually effective. Nevertheless, as the CoE CPT once mentioned the systemic and endemic nature of torture in Azerbaijan along with mentioning its astonishment over the fact that none of the alleged perpetrators had actually been punished in a particular period of time, these developments are worth mentioning[249].

Moreover, the UN CAT has cited a similar problem in its concluding observations on Azerbaijan in 2015. In the concluding observations of UN CAT dated 2015, the Committee stated the following:

> "[…] The Committee is particularly concerned that, according to the State party's report, during the period 2010-2015 not a single individual was prosecuted despite the 334 complaints against officials of the prison system for torture or ill-treatment investigated by the Prison Service between 2009 and 2013, the 984 similar complaints received by the Ministry of Internal Affairs between 2010 and

[247] Committee against Torture, concluding observations 2016, *op. cit.* p. 3, § 10.
[248] See *supra*. Yunusova and Yunusov, p. 36, 45, 46; *ibid.*
[249] Council of Europe CPT report 2017. *op. cit.*, p. 18, § 27.

2013 and the 678 similar complaints received by the Office of the Procurator General between 2010 and 2013 […]"[250]

UN CAT considered this to be an indication to the lack of promptness, efficiency, and impartial manner in the investigations into the allegations of ill-treatment[251].

The independence of the investigation is also not secured in Azerbaijan. As one can see from the ECtHR cases against Azerbaijan, some of the investigations into victims' allegations are conducted by the same organizations that have allegedly ill-treated them. This is a serious problem and it needs to be addressed. Although the allegations of ill-treatment either have to be examined by the courts or by the prosecutor offices, these organizations usually refer these cases to police stations. This practice needs to be completely eradicated and the police should not have any procedural rights to examine the cases related to ill-treatment.

It is important to mention that in some ECtHR cases against Azerbaijan, the Court did not find the violation of Article 3 in its substantive limb citing the lack of effective investigation on time by the domestic authorities as the reason for it.

Another administrative practice is related to the examination of the evidences. Although this issue does not fall under the scope of Article 3 of the ECHR, it is closely connected to it. In most of the aforementioned cases in the ECtHR, one can easily notice the following issues related to examination of evidences:

1) The forensic reports usually are not taken into consideration by the domestic authorities. Their findings are either rejected, or refuted by bogus and utterly unimaginable arguments. For instance, in the aforementioned case of Hilal Mammadov, the Government claimed that the injuries on the applicant's body had actually been sustained during the arrest, as the applicant was resisting thus provoking the police to drag him to the police car. As a result of this, the applicant's body contacted the angular protruding parts of the car which inflicted injuries on the applicant's body. Moreover, in the case of Muradova, the Government claimed that the applicant was pushed from behind as a result of which she fell on a blunt object and lost her vision on the right eye. Despite the existence of detailed forensic reports in these applicants' cases, the domestic authorities had rejected them.

[250] Committee against Torture, concluding observations 2016, *op. cit.*, p. 2, § 8.
[251] *ibid*.

2) The arguments of defence are usually dismissed by the domestic authorities. It is clear from most of the cases against Azerbaijan in the ECtHR that the domestic authorities are mostly relying on the testimonies of police officers (in most cases, they are also the ones who allegedly ill-treated the applicants) and confessions of applicants. And even if they did consider the pro-applicant witness statements, they are rebutted by the evidences of investigation which include the evidences mentioned above.

3) The forensic examinations are not conducted in time which leads to disappearance of the wounds and injuries sustained by persons from the hands of law-enforcement agents. As we could see, the Court did not find the violation of the substantive limb of Article 3 citing the failure of domestic authorities to conduct an effective investigation into the allegations. This is a crucial factor in establishing the instances of ill-treatment.

The UN CAT in its 2015 concluding observations cited the issue of domestic courts' acceptance of evidences obtained through infliction of torture[252]. The Committee also noted that the courts did not seek investigation into allegations of defendants about confessions given as a result of torture[253].

Lastly, mentioning the NPM is important. It was established on 24 June, 2011 by a Constitutional Law which made several amendments to the Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan. The report of this institution published in 2016 does not contain any complaints made by the inmates, although such complaints have been received by the CoE CPT and UN CAT repeatedly. It is worth mentioning that the Ombudsman of the Republic of Azerbaijan is the person who appoints the members of the NPM, whereas the Ombudsman herself is proposed by the President and appointed by the Parliament[254]. According to the report issued by the IPD, a local NGO, this is the proof that neither the NPM, nor the Ombudsman is an independent organ since the Parliament itself is dependent on the President[255]. Moreover, the report cited that NPM had not intervened in any of the aforementioned cases (Nardaran case, Tartar military espionage case, Ganja case, death of an arrestee in a police station in the Azerbaijani city of Gazakh)[256].

[252] *ibid*. p. 5, § 18.
[253] *ibid*.
[254] 1995 Constitution. *op. cit.*, Article
[255] Contribution to the List of Issues 2018. *op. cit.*, p. 14.
[256] *ibid*.

SUMMARY

The goal of this thesis was to identify the areas of non-compliance and discrepancy between the administrative practice in Azerbaijan and the international standards prescribed by the international law. Moreover, the thesis was aimed at providing recommendations on the improvement of the situation in the country.

Almost all of the hypotheses manifested in the introduction of this paper have been proved by me except for a part of the third hypothesis. In that hypothesis, I assumed that some of the law-enforcement, judicial, and monitoring bodies are not independent to combat the instances of ill-treatment. The part regarding the independence of monitoring bodies, such as the Ombudsman was not proved. Although I cited some of the remarks made by local NGOs and the UN CAT regarding the work of the NPM which functions under the auspices of the Ombudsman, in general, this point was not proved by me. I would link it with the lack of information and relevant reports on the work of this institution. It is also important to note that although this research could not prove this point, the existing practice of Azerbaijan regarding the right to prohibition of torture is enough to consider that NPM and Ombudsman are ineffective since in the light of systemic violations their work could have improved the situation. However, the result is the opposite of this.

However, all of the other hypotheses have been proved. For instance, the first hypothesis is concentrated around the endemic and systemic nature of ill-treatment in Azerbaijan, and the political motives behind the instances of ill-treatment. The endemic and systemic nature of ill-treatment in Azerbaijan is evident since there have been 32 cases already at the ECtHR where the Court found the violation of Article 3 by the Government of Azerbaijan along with the ongoing major cases of torture such as “Tartar military espionage” or “Ganja cases”. Moreover, the terms “endemic and systemic” have been mentioned by CoE CPT on different occasions. Regarding the political motives behind these instances of ill-treatment, the Government always denied them, but the findings of most of the cases, extracts from media reports, the reports of international and local NGOs, and remarks made by the international organizations (precisely, UN CAT and CoE CPT) prove this statement to be true. It is clear that in most of the cases, the violation of Article 3 was closely connected with other rights enshrined in the ECHR, more precisely, with freedom of assembly, right to fair trial, and right to liberty. These rights and freedoms are considered high values in democratic societies. Especially, the freedom of assembly is considered one of the forms of democratic processes where people can voice their

opinions against the presumably wrong policies of Government. Violation of these rights and freedoms against the background of infliction of ill-treatment to applicants clearly shows that the intentions of the Government were political. Given the fact that the Republic of Azerbaijan has been considered a non-free state since the end of 1990s by Freedom House further proves the hypothesis on the political motivations behind the Government's actions.

The lack of access to an effective legal assistance is indeed one of the main reasons of widespread instances of ill-treatment in the law-enforcement system of Azerbaijan. The cases of Insanov, Ibrahimov and Mammadov, Aliyev, Hajibeyli and Aliyev, and Bagirov clearly show the problems in the legal assistance sphere of Azerbaijan. Moreover, these issues were covered in the reports of UN CAT and CoE CPT which I cited in one of the paragraphs dedicated to Ibrahimov and Mammadov case[257]. Taking into consideration the instances of unlawful disbarments of lawyers, refusals in admission to the ABA, and low number of lawyers in the country it is plausible to say that there is a lack of effective legal assistance. As CoE CPT and UN CAT have cited it as one of the legal safeguards against ill-treatment, the lack of it equals to widespread instances of ill-treatment. Thus, the second hypothesis can be considered proved.

And lastly, one part of the third hypothesis was also proven to be true. In that hypothesis, I argued that judicial and human rights monitoring bodies (such as Ombudsman) are not independent which is also a reason for widespread ill-treatment cases. Although I was not able to prove my point regarding the monitoring bodies, the assumptions regarding the non-independence of judicial bodies has been proved in the light of several cases where ECtHR found the violation of the procedural limb of Article 3 of the ECHR. In those cases, one of the biggest problems was the behaviour of the local courts in respect to the allegations of ill-treatment made by the applicants. In particular, in most of the cases, the domestic courts did not take the allegations into consideration, relied heavily on the findings of the investigation, and even in some instances, openly endorsed them. Moreover, the domestic courts did not let the applicants to examine the witnesses who testified against them, nor they let the applicants to bring their own witnesses before the court.

It is important to change the practice of dealing with ill-treatment allegations in Azerbaijan in order to improve the situation. There are already 32 cases related to ill-treatment with 51 applications in general. This list will probably continue to grow up as the victims in the

[257] *Supra*, p. 39.

aforementioned domestic cases have expressed an interest in pursuing the justice at the Strasbourg Court.

With regards to the legal basis of the issue, there are not much problems. In fact, as I established in the first chapter, the legal framework in Azerbaijan related to prohibition of torture and other forms of ill-treatment is actually in compliance with the international standards. The actual problems occur in practice. Firstly, the forensic examination institute is not effective. Despite the Law on Forensic Examination Activities prescribes private forensic examination activities, in reality, it is not functional[258]. We could see the example of such a practice in the Hummatov case, where the Government questioned the professionalism of the independent forensic experts who had examined the applicant before and found serious health problems. In order to improve the situation, the domestic authorities need to consider the private medical examination reports as well. It is also true that sometimes, the state-funded medical examinations are also flawed as the medical experts refuse to record the victims' injuries and the examination processes are conducted in the presence of a government agent such as police or prison warden. The CoE CPT has stated it in one of its reports.[259] Similar points have been made by the UN CAT in its concluding observations.[260]

Secondly, the access to the lawyer of one's own choosing must be secured. The assistance of state-funded lawyers has been rendered ineffective in many instances. Even the CoE CPT mentioned that it had received many allegations about the non-effective work of the so called *ex officio* lawyers. In particular, they remained silent during the proceedings and did not even interact with their clients. According to the report of the CoE CPT, some of them even tried to dissuade the clients from making any complaints. In order to provide an effective legal assistance, some of the *ex officio* lawyers even demanded undue payments.[261] To improve the situation, it is important to ensure access to independent, qualified, and experienced lawyers who can effectively defend someone's rights before the law-enforcement bodies and the courts. The right to choose the lawyer prescribed in the Article 6 § 3 (c) of the ECHR should be fully secured. It is important to let detainees communicate with their families who can help them to hire a highly qualified, independent lawyer. The relatives of a detainee should be aware of the fact of arrest before hiring a lawyer to defend the person. In order to achieve this, the investigative authorities (prosecutor, investigator, or preliminary investigator) should secure the

[258] The Law No. 758-IQ "on Forensic Examination Activities". Adopted 18.11.2019, e.i.f. 31.01.2000. Article 11.
[259] Council of Europe CPT report 2017. *op. cit.*, p. 5.
[260] Committee against Torture, concluding observations 2016, *op. cit.*, p. 4, § 12.
[261] Council of Europe CPT report 2017. *op. cit.*, p. 22. § 34.

right to access to lawyer and to family members. By law, investigator and preliminary investigator is obliged to explain the rights of the suspect to him from the moment of his arrest. On the other hand, the prosecutor has the right to eliminate a lawyer from criminal proceedings if he notices factors which enable him to do so.[262] In my opinion, this provision needs to be repealed. Because of this provision, the domestic authorities can easily get rid of the lawyers who "obstruct" their work. In practice, there have been several cases where prominent lawyers who had led several cases were disbarred from the ABA based on the complaints issued by the law-enforcement bodies. The UN CAT has cited two such cases.[263] Disbarments of independent lawyers are also big problems in preventing torture.

Moreover, some of the famous practical lawyers are not admitted to the ABA. I have already cited the case of Hajibeyli and Aliyev but there are many more of such cases.[264] In order to ensure that everyone in the country has an access to lawyer, it is not necessary to hold a specific examination to the ABA. Practical lawyers should also have the right to represent people before law-enforcement bodies and courts. Moreover, the domestic authorities should provide lawyers and their clients with a confidential environment where they can prepare their defence. Their mutual access should not be restricted on standard grounds. Thirdly, it is important to ensure the effectiveness of investigations launched into the allegations of ill-treatment. The ECtHR has established several drawbacks in this regard in the cases against Azerbaijan. The bodies, whose agents have allegedly ill-treated people, are usually entrusted to investigate the allegations of the victims. It is a gross violation and completely deprives the victims from safeguards against ill-treatment.

In order to improve the situation, I would like to suggest that a specific body on ill-treatment allegations should be constituted. The already established NPM is not independent as it is functioning under the Ombudsman who is in turn appointed by the Parliament on the proposals of President which shows that the proposed candidates might have some political affiliations to the ruling power. It should be constituted by the CoE in order to ensure its independence. Its decisions should be legally binding, just like the judgments and decisions of the ECtHR. Anyone who is being ill-treated can apply to this body and seek redress for his ill-treatment. However, in my opinion, it would be better if this body considered the complaints not directly, but after exhausting the existing remedies such as the prosecutors' offices and the courts. In my view, this

[262] Code of Criminal Procedure 2000, *op. cit.*, Article 84.5.5.
[263] Committee against Torture, concluding observations 2016, *op. cit.*, p. 4, § 16.
[264] See e.g. I. Djalilov, T. Grigoryevna. Injustice for all: how Azerbaijan's Bar Association was reduced to tatters. Open Democracy, 18.07.2018. Accessible at: https://www.opendemocracy.net/en/odr/injustice-for-all/

could also improve the work and reaction of those organs to the allegations of ill-treatment. As the CoE body's decisions and judgments would be legally binding on all law-enforcement and judicial bodies, it can also help those organs to enrich their practice.

ABBREVIATIONS

ABA – Azerbaijan Bar Association

Azerbaijan SSR – Azerbaijan Soviet Socialist Republic

CAT – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CCP – Code of Civil Procedure of the Republic of Azerbaijan

CCpR – Code of Criminal Procedure of the Republic of Azerbaijan

CEP – Code on Execution of Punishments of the Republic of Azerbaijan

CIS – Commonwealth of Independent States

CoE – Council of Europe

CoE CAT – European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CoE CM – Council of Europe Committee of Ministers

CoE CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

ICCPR – International Covenant on Civil and Political Rights

ICJ – International Court of Justice

IPD – Institute of Peace and Democracy

MIA – Ministry of Internal Affairs

MIA OCU – Ministry of Internal Affairs Organized Crime Unit

MNS – Ministry of National Security

MUM – Muslim Unity Movement

NGO – Non-governmental organization

NPM – National Preventive Mechanism

OPCAT – Optional Protocol to the Convention against Torture

PACE – Parliamentary Assembly of the Council of Europe

UDHR – Universal Declaration of Human Rights

UN – United Nations

UN CAT – United Nations Committee against Torture

UN HRC – United Nations Human Rights Committee

UN WGAD – United Nations Working Group on Arbitrary Detention

USA – United States of America

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14) ECtHR 23380/09, Bouyid v. Belgium, judgment, 28 September, 2015.

15) ECtHR 56688/12, Chankayev v. Azerbaijan, judgment, 14 November, 2013.

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17) ECtHR 20869/92, Dikme v. Turkey, judgment, 11 July, 2000.

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