

RAUF MIRGADIROV V. AZERBAIJAN AND TURKEY
(Application No. 62775/14)

WRITTEN COMMENTS

BY

**HELSINKI FOUNDATION FOR HUMAN RIGHTS, HUMAN RIGHTS
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I. INTRODUCTION

This third party intervention is submitted by the Helsinki Foundation for Human Rights (HFHR), the Human Rights House Foundation (HRHF), and Freedom Now pursuant to leave granted on 22 April 2016 by the President of the Chamber of the European Court of Human Rights (Court) under Rule 44 § 2 of the Rules of the Court. This intervention addresses the Azerbaijani government's pattern of politically motivated arrests of journalists, its misuse of its judicial system and pretrial detention, as well as Turkey's withdrawal of journalistic accreditation from Raul Mirgadirov (Applicant) and his resulting deportation to Azerbaijan. This intervention serves to provide a comparative law analysis of issues relevant to the case of the Applicant and provide broader context on Azerbaijan and Turkey's consistent violation of obligations under Articles 5 and 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention).

II. PATTERNS OF ABUSE AND CRACKDOWN ON CIVIL SOCIETY

A pattern of systematic restriction of fundamental rights in Azerbaijan is well documented, especially the punishment for the exercise of freedom of expression through arbitrary arrests and detentions. Since 2013, the Azerbaijani government has systematically targeted journalists and human rights defenders (HRDs) who have spoken out about government corruption and human rights abuses. While the targeting of dissidents has long been of serious concern to Council of Europe (CoE) institutions, the current crackdown is notable. First, the government is targeting an ever wider set of

independent actors that includes journalists, civil society leaders, and internationally respected HRDs. And second, the type of criminal charges used and the length of prison sentences imposed, including pretrial detention, indicates zero tolerance for dissent. The environment for journalists and others has grown increasingly more restrictive due to a series of laws that limit the operations and funding options of independent organizations. Independent civil society in the country has been paralyzed.

In spite of Azerbaijan's obligations under the Convention and the International Covenant on Civil and Political Rights (ICCPR), the current crackdown shows little sign of abatement.¹ Although a number of Azerbaijani political prisoners were freed in March 2016, the repressive laws which provide the basis for many arbitrary detentions remain unchanged. Currently, about 60-70 political prisoners sit behind bars.² Media voices have been particularly hard hit.³

In response, various international mechanisms established under the CoE and the UN have found that the imprisonment of peaceful advocates in Azerbaijan violates international law. For example, in 2015 the Parliamentary Assembly of the Council of Europe (PACE) noted: "the Assembly is alarmed by reports by human rights defenders and international NGOs, confirmed by the Council of Europe Commissioner for Human Rights, concerning the increase in criminal prosecutions against NGO leaders, journalists, lawyers and others who express critical opinions, based on alleged charges in relation to their work, especially human rights lawyer Intigam Aliyev; Anar Mammadli, the head of an election monitoring group; veteran activist Leyla Yunus and her husband Arif Yunus; Rasul Jafarov, founder of the 'Sports for Rights' campaign; and journalists Khadija Ismayilova and Rauf Mirgadirov. The Assembly calls on the authorities to end the systemic harassment of those who are critical of the government and to release those wrongfully detained."⁴

II.1. Misuse of Judicial System as Tool of Oppression

The Azerbaijani government has turned its judicial system into a weapon of persecution of independent voices through its use of politically motivated criminal charges. Such criminal charges can be described as fitting into one or more of three categories: organization-directed, common

¹ As party to the Convention and the ICCPR, Azerbaijan is obliged to, *inter alia*, respect individuals' freedom of expression and refrain from use of arbitrary detention. See International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976 at arts. 9, 19; European Convention on Human Rights, (ETS No. 5), 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively, at arts. 5, 10.

² *List of Political Prisoners in Azerbaijan*, Norwegian Helsinki Committee (May 2015) available at <http://www.nhc.no/filestore/Dokumenter/Land/Azerbaijan/ListofpoliticalprisonersinAZMay2015.pdf>; *Media Release: 15 Azerbaijani Prisoners of Conscience Released*, Freedom Now, (18 March 2016), available at <http://www.freedom-now.org/news/media-release-15-azerbaijani-prisoners-of-conscience-released/>.

³ Over spring and summer 2015 the Baku Radio Free Europe/Radio Liberty (RFE/RL) bureau closed down and foreign journalists were banned from entering the country. See *RFE/RL Takes Action in Azerbaijan*, Broadcasting Board of Governors, (22 May 2015), available at <http://www.bbg.gov/blog/2015/05/22/rferl-takes-action-in-azerbaijan/>; Shaun Walker, *Azerbaijan Bans Guardian from Reporting on Baku European Games*, The Guardian, (11 June 2015), available at <http://www.theguardian.com/sport/2015/jun/11/azerbaijan-bans-guardian-european-games-baku-2015>.

⁴ *Resolution on the functioning of democratic institutions in Azerbaijan*, Parliamentary Assembly of the Council of Europe, Res. No. 2062, ¶ 10, (23 June 2015).

fabricated and patently politically-motivated. Patently politically-motivated charges involve allegations wherein the authorities essentially admit that the detainee's speech, association, assembly or political activities – all protected under international law – is the reason for the arrest, and typically include charges such as inciting hatred, mass disorder, and treason. Such charges are at issue in the current case under consideration by the Court.

The case under current consideration is strikingly similar to that of other patently politically-motivated cases where individuals have been charged with treason. The charge of treason is generally invoked against journalists or civil society leaders whose work involves activism aimed at promoting peace or accountability in the context of Azerbaijan's immediate neighbors. While promotion of cultural diversity and intercultural dialogue internationally is one of the objectives in the Action Plan of Azerbaijan to Council of Europe,⁵ journalists and HRDs who cooperate across borders face accusations and criminal charges at home. For example, patently politically-motivated charges have been leveled against HilalMammadov, a journalist and minority rights defender, who was convicted of treason on 27 September 2013 and against Leyla and ArifYunus, two prominent civil society actors involved in peace-building activities between Azerbaijanis and Armenians, who were accused of treason in July 2014 for allegedly conspiring with Armenian intelligence officials.

While states are granted a “margin of appreciation” regarding national security, the Court has observed that national security charges against peaceful actors – in the absence of any evidence that the individual used or advocated violence to achieve their goals – will violate the state's obligations under international law.⁶ Sweeping national security charges such as treason are especially subject to abuse by authorities who are increasingly relying on such charges to deter the work of civil society actors.⁷ In acknowledgement of this concern, the UN Human Rights Committee has noted that “[e]xtreme care must be taken by State parties to ensure that treason laws and similar provisions relating to national security, whether described as official secrets or sedition laws or otherwise, are crafted and applied in a manner that conforms to the strict requirements of [international law].⁸ International bodies have repeatedly objected to the use of national security rationales when such provisions are used to punish peaceful activities.⁹Based on the Resolution 1551 (2007) adopted by PACE, it can be concluded that, for example, “high profile espionage cases against scientists, journalists and lawyers” can have a “chilling effect on other members of these professional groups. The climate of 'spy mania' fueled by these cases and controversial statements

⁵ Action Plan for Azerbaijan 2014 – 2016 (1 Apr. 2014) ODGProg/Inf(2014)2Rev, at § 9.

⁶ *Sidiropoulos and Others v. Greece*, European Court of Human Rights, Application No. 26695/95, ¶ 43, (10 July 1998). See also *Eğitim Ve Bilim Emekçileri Sendikası v. Turkey*, European Court of Human Rights, Application No. 20641/05, ¶¶ 51 – 60, (25 Sep. 2012).

⁷ *Promotion and Protection of Human Rights: Human Rights Defenders*, UN Special Rapporteur on the Situation of Human Rights Defenders, UN Doc. E/CN.4/2004/94, ¶ 52, (15 Jan. 2004).

⁸ *General Comment No. 34*, UN Human Rights Committee, UN Doc. CCPR/C/GC/ 34, ¶ 30 (12 Sep. 2011).

⁹ See e.g. *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, ¶ 10.4, (18 March 1994); *Second Report on the Situation of Human Rights Defenders in the Americas*, Inter-American Commission on Human Rights, OEA/Ser.L/V/II. Doc 66, ¶¶ 93, 107 – 108, (31 Dec. 2011); *Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia*, African Commission on Human and Peoples' Rights, Res. No. 218 (2 May 2012); *Nega v. Ethiopia*, WGAD, Opinion No. 62/2012, ¶ 40 (21 Nov. 2012); see also *Sidiropoulos and Others v Greece*, *supra* note 6, at ¶ 43.

of senior government representatives” can be “obstacles to the healthy development of civil society.”¹⁰

II.2. Specific Issues of International and European Law

The case of the Applicant, as with the related Azerbaijani applications currently pending before the Court, implicates a number of important legal questions relating to heightened protection for HRDs, judicial independence and the improper imposition of pretrial detention.

A. Heightened Protection of HRDs under International Law

The concept and importance of HRDs is enshrined in the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration)¹¹ and has been repeatedly reaffirmed by the UN General Assembly¹² and Human Rights Council.¹³ The CoE¹⁴ and PACE¹⁵ have both called for and taken steps to ensure enhanced protection for HRDs. Journalists working on reporting of human rights abuses are explicitly recognized as falling under the definition of HRDs.¹⁶

In the context of judicial review of detention, the imprisonment of a HRD must be subjected to heightened scrutiny. The UN Working Group on Arbitrary Detention (WGAD) has confirmed the necessity to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review,”¹⁷ specifically in the cases when the WGAD must consider “the relationship between the detention and prosecution of [an investigative journalist and a HRD] and his exercise of the fundamental rights to freedom of expression and association.”¹⁸ Moreover, “the possible restriction on [the right to freedom of expression] and the work as human rights defender [...] put a heavy burden on the Government to show that the harsh punishment was not discriminatory due to [the individual's] human rights activities.”¹⁹ Therefore, when considering the detention of HRDs, including journalists, the Court should examine the circumstances in which HRDs work and apply a heightened standard of review to such detention.

¹⁰Resolution on Fair Trial Issues in Criminal Cases Concerning Espionage or Divulging State Secrets, Parliamentary Assembly of the Council of Europe, Res. No. 1551, ¶ 7, (19 Apr. 2007).

¹¹Resolution on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN Doc. A/RES/53/144 (8 March 1999).

¹²Resolution 22/6, UN Doc. A/HRC/RES/22/6 (21 March 2013).

¹³Resolution 68/181, UN Doc. A/RES/68/181, (18 Dec. 2013).

¹⁴The Committee of Ministers of the CoE has called on CoE Member States to “create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities [...] to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the [Convention ... and] “to take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities. *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities*, (6 Feb. 2008), at ¶¶ 2.i, 2.ii.

¹⁵For example, both the UN and PACE have established rapporteurs on the situation of HRDs.

¹⁶See, e.g., *Who is a Defender*, UN Special Rapporteur on the situation of human rights defenders, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>.

¹⁷*Nega v. Ethiopia*, WGAD, Opinion No. 62/2012, ¶ 39, (21 Nov. 2012).

¹⁸*Dilmurod Saidov v. Uzbekistan*, WGAD, Opinion No. 67/2012, ¶ 56, (12 Apr. 2012).

¹⁹*Id.*, at ¶ 57.

B. Judicial Independence and Impartiality

The Court has held that a detainee's right to be brought before a judge under Article 5(3) of the Convention and a detainee's right to have the lawfulness of detention examined under Article 5(4) of the Convention require an independent adjudicating court or judicial officer.²⁰ The Court has further confirmed that "independence" means independence from the legislative or executive power,²¹ which can be determined in part by reference to the manner of the appointment of members of the court and the length of their term, the existence of guarantees against outside pressure, and whether the court presents the appearance of independence.²²

The UN Human Rights Committee has opined that the right to equality before the courts "is a key element of human rights protection and serves as a procedural means to safeguard the rule of law."²³ At its core, this right requires that the adjudicatory process be conducted by a competent, independent, and impartial tribunal that is established by law.²⁴ This standard must be measured by an objective "reasonableness standard" – that is, the court must appear to a reasonable observer to be impartial.²⁵ If, for example, a court fails to prevent or remedy serious procedural mistakes – such as convicting a defendant without any supporting evidence of the crime or without a reasoned judgment– this would indicate to a reasonable observer that the proceedings are not "fair."

Azerbaijani courts are heavily dependent on the executive. Judges are selected via an examination process that lacks external monitoring to ensure fairness and then appointed by the president or the parliament, depending on the court.²⁶ Considering also the domination of parliament by the president's ruling party, there are no safeguards against political favoritism in the selection process for judges.²⁷ Moreover, far from the independent, unbiased proceedings that are required under international law, the criminal prosecutions of activists in Azerbaijan cases are orchestrated to reach a guilty verdict, wherein exculpatory evidence is ignored. The failure of the Azerbaijani courts to deal with the parties fairly, willingness to convict without supporting evidence, and the reported bias of judges in these proceedings indicates that they are not fair from the perspective of a "reasonable observer."

C. Right to a Presumption of Innocence

Under European and international human rights law, as codified in the Convention and the ICCPR,

²⁰*Schiesser v. Switzerland*, European Court of Human Rights, Application No. 7710/76, ¶ 31, (4 Dec. 1979); *Stephens v. Malta (no. 1)*, European Court of Human Rights, Application No. 11956/07, ¶ 95, (21 Apr. 2009).

²¹*Ninn-Hansen v. Denmark*, European Court of Human Rights, Application No. 28972/95 (Decision on Admissibility), (18 May 1999).

²²*Findlay v. United Kingdom*, European Court of Human Rights, Application No. 22107/93, ¶ 73, (25 Feb. 1997).

²³*General Comment 32*, UN Human Rights Committee, UN Doc. CCPR/C/GC/32, ¶ 2 (23 Aug. 2007).

²⁴*Id.*, at ¶ 15.

²⁵*Id.*, at ¶ 21.

²⁶*Nations in Transit 2014 – Azerbaijan*, Freedom House, 104-106, available at https://freedomhouse.org/sites/default/files/NIT14_Azerbaijan_final.pdf.

²⁷ *Id.*

criminal defendants are presumed innocent until proved guilty according to law.²⁸ This requirement creates obligations for the government inside and outside the courtroom. Outside the courtroom, the authorities are under an obligation to “refrain from pre-judging the outcome of a trial”; specifically this means that officials must “[abstain] from making public statements affirming the guilt of the accused.”²⁹ This requirement is violated where, for example, “public statements made by high ranking law enforcement officials portraying the [defendant] as guilty [are] given wide media coverage.”³⁰

It is especially striking that in Azerbaijan, senior government officials consistently use their pulpit to portray the work of journalists and HRDs as threats to national security. Indeed, government officials and pro-government media have publicly smeared government critics – repeatedly and often well before criminal proceedings are concluded. For example, in the case of *Mammadov v. Azerbaijan*, the Court found that the state violated the presumption of innocence when the Prosecutor General’s office and the Ministry of Internal Affairs issued a public statement indicating that “it has been established” that Mr. Mammadov had urged local residents to resist police and block roads during unrest in the Ismayilli region – essentially pre-judging the outcome of the criminal proceedings.³¹

D. Right to Release Pending Trial

The Court has repeatedly criticized the Azerbaijani authorities’ imposition of pretrial detention.³² The Convention broadly establishes the requirement under Article 5(1)(c) that a court must demonstrate a “reasonable suspicion” of guilt when ordering remand; such “reasonable suspicion” presupposes the “existence of facts or information which would satisfy an objective observer that the person concerned may have committed an offence.”³³ Similarly, the UN Human Rights Committee has confirmed that the measure of “arbitrariness” in detention “is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. As the Committee has observed on a previous occasion, this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.”³⁴

In many of the cases now pending before the Court, the question of whether the government established a “reasonable suspicion” of guilt and the government’s ultimate motivation for the prosecution are closely related. As in the recent cases of *Mammadov v. Azerbaijan*³⁵ and *Yagublu v. Azerbaijan*,³⁶ where the Court found that the government had failed to establish a reasonable

²⁸International Covenant on Civil and Political Rights, *supra* note 1, at art. 14(2); European Convention on Human Rights, *supra* note 1, at art. 6(2).

²⁹ General Comment 32, *supra* note 23, at ¶ 30.

³⁰*Gridin v. Russian Federation*, UN Human Rights Committee, Communication No. 770/1997, UN Doc. CCPR/C/69/D/770/1997 (2000), ¶ 8.3, (20 July 2000).

³¹*IlgarMammadov v. Azerbaijan*, European Court of Human Rights, Application No. 15172/13, ¶ 14, 127-28, (22 May 2014).

³²*See, e.g., id.; Aliyev v. Azerbaijan*, European Court of Human Rights, Application No. 37138/06, (9 Nov. 2010); and *Muradverdiyev v. Azerbaijan*, European Court of Human Rights, Application No. 16966/06, (9 Dec. 2010).

³³*IlgarMammadov v. Azerbaijan*, *supra* note 31, at ¶ 88.

³⁴*Mukong v. Cameroon*, Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991. ¶ 9.8, (10 Aug. 1994).

³⁵*IlgarMammadov v. Azerbaijan*, *supra* note 31, at ¶¶ 87 – 101.

³⁶*Yagublu v. Azerbaijan*, European Court of Human Rights, Application No. 31709/13, ¶ 62, (5 Nov. 2015).

suspicion of guilt, these cases arise in the context of an ongoing crackdown on civil society and a targeted campaign to discredit and undermine journalists, including the Applicant in this case. While the Court has noted that there is a general presumption of good faith under the Convention, that presumption is rebuttable where an applicant is able to “convincingly show that the real aim of the authorities was not the same as that proclaimed or which could be reasonably inferred from the context.”³⁷ In applying this “very exacting standard of proof,” the Court has not relied on broad statements regarding the general political situation in the country.³⁸ Instead, the Court has looked to the relevant case specific facts to determine whether, given all of the evidence before it, the ultimate motive of the government is an arbitrary limitation on the exercise of a fundamental right.³⁹

In addition, the Court has held that, under Article 5(3) of the Convention, even a reasonable suspicion of guilt will not justify the lawfulness of a continued detention without reference to “specific facts and the applicant’s personal circumstances justifying his detention.”⁴⁰ In recent cases, the Court has time and time again found that Azerbaijan has violated its obligations under Article 5(3) by relying on irrelevant grounds and failing to mention or substantiate case-specific facts relevant to the acceptable grounds for continued detention.⁴¹

While the legality of a detention will not depend upon general observations about the country, the specific circumstances surrounding the continued detention of journalists, HRDs, and activists are relevant to investigations under Article 5. Indeed, a number of specific facts may be relevant to such an inquiry in this case, including the nature of the Applicant’s work, a history of past harassment and persecution, the conduct of state agents towards the Applicant, the specificity of the charges, the length of pretrial detention, and the conduct of the proceedings.

III. WITHDRAWAL OF ACCREDITATION and DEPORTATION

The case raises concerns regarding the arbitrary cancellation of the Applicant’s journalistic accreditation, leading to his arbitrary arrest, administrative detention and removal from Turkey. Turkey is the CoE country with the worst record of respecting its citizen’s freedom of expression; according to the 2016 World Press Freedom Index of the Reporters Without Borders, Turkey stands at the 151 position out of the 180 countries ranked worldwide.⁴² Azerbaijan also has a poor record of respecting its citizens’ freedom of expression which is reflected by the high number of Court judgments concerning the arbitrary detention of journalists.⁴³ According to the 2016 World

³⁷ *IlgarMammadov v. Azerbaijan*, *supra* note 31, at ¶ 137.

³⁸ *Id.*, at ¶ 138.

³⁹ *Id.*

⁴⁰ *Aleksanyan v. Russia*, European Court of Human Rights, Application No. 46468/06, ¶ 179, (22 Dec. 2008).

Specifically, the Court has developed four basic acceptable reasons for refusing bail: (a) the risk that the accused will fail to appear for trial; (b) the risk that the accused, if released, would take action to prejudice the administration of justice, or (c) commit further offences, or (d) cause public disorder. *See Smirnova v. Russia*, European Court of Human Rights, Application Nos. 46133/99 and 48183/99, ¶ 59, (24 July 2003).

⁴¹ *See e.g., Isayeva v. Azerbaijan*, European Court of Human Rights, Application No. 36229/11, ¶¶ 90-91 (25 June 2015); *Allahverdiyev v. Azerbaijan*, European Court of Human Rights, Application No. 49192/08, ¶¶ 58-59, (6 March 2014); *Ismayilov v. Azerbaijan*, European Court of Human Rights, Application No. 16794/05, ¶¶ 60-63, (20 Feb. 2014); *Zayidov v. Azerbaijan*, European Court of Human Rights, Application No. 11948/08, ¶¶ 65-69, (20 Feb. 2014); *Aliyev v. Azerbaijan*, European Court of Human Rights, Application No. 45875/06, ¶ 92, (6 Dec. 2011).

⁴² *Press Freedom Index 2016*, Reporters Without Borders, available at: <http://index.rsf.org#!/index-details>.

⁴³ *E.g., Fatullayev v. Azerbaijan*, European Court of Human Rights, Application No. 40984/07, (22 Apr. 2010).

Press Freedom Index of the Reporters Without Borders, Azerbaijan stands at the 163 position out of the 180 countries ranked.⁴⁴ According to the Reporters Without Borders, in 2015 in Azerbaijan 8 journalists were imprisoned and one was killed.⁴⁵ Azerbaijan is on the Committee to Protect Journalists' list of most censored countries.⁴⁶

A number of soft law instruments refer to the principles surrounding the system of journalistic accreditation. According to the CoE Recommendation no. R(96)4 of the Committee of Ministers to member states on the protection of journalists in situations of conflicts and tension:

“Member states should refrain from taking any restrictive measures against journalists such as withdrawal of accreditation or expulsion on account of the exercise of their professional activities or the content of reports and information carried by their media. . . . Systems for accreditation of journalists should be introduced only to the extent necessary in particular situations. When accreditations systems are in place, accreditation should normally be granted. Member states shall ensure that: accreditation is not used for the purpose of restricting the journalist's liberty of movement or access to information. . . . [A]ny refusal of accreditation having the effect of restricting a journalist's liberty of movement or access to information is reasoned.”⁴⁷

In contradiction to this recommendation, when the Applicant was informed by the Turkish authorities that his accreditation was cancelled he was given merely oral notification of such cancellation rather than a “reasoned” justification of why such decision was made.

The Recommendation CM/Rec(2016)4 of the Committee of Ministers to member states on the protection of journalism and safety of journalists and other media actors sets forth that member states should exercise vigilance to ensure that administrative measures such as registration, accreditation and taxation schemes are not used to harass journalists and other media actors or to frustrate their ability to contribute effectively to public debate.⁴⁸ The withdrawal of accreditation may have a chilling effect on other journalists.

Accreditation should not be the basis on which governmental bodies decide whether to allow a particular journalist to attend and cover a public event. Further, the threat of revocation of the accreditation for an event should not be used as the means to control the content of critical reporting. The guidelines for issuing accreditation should be drawn up with the aim to promote pluralism, transparent, available to the public, and applied impartially and without arbitrary exceptions. Refusal of accreditation should be accompanied by the right on the part of an applicant to dispute the reasons for the refusal.⁴⁹

⁴⁴ *Press Freedom Index 2016*, *supra* note 42.

⁴⁵ *Journalist Killed by Culture of Intolerance and Impunity*, Reporters Without Borders, (10 Aug. 2015), available at <https://rsf.org/en/news/journalist-killed-culture-intolerance-and-impunity>.

⁴⁶ *10 Most Censored Countries 2015*, Committee to Protect Journalists, available at <https://cpj.org/2015/04/10-most-censored-countries.php>.

⁴⁷ Adopted at the 98th meeting of the Committee of Ministers, principle 7, ¶ 3, and principle 11 ¶ (c) and (e), (3 May 1996).

⁴⁸ Adopted at the 1253rd meeting of the Ministers' Deputies, ¶ 13, (13 Apr. 2016).

⁴⁹ Miklos Haraszti, *Special Report: Accreditation of Journalists in the OSCE area*, Organization for Security and Co-operation in Europe, 1, 5 (25 Oct. 2006), available at <http://www.osce.org/fom/22065?download=true>.

A number of Court judgments have considered the problem of cancellation of accreditation. The European Commission on Human Rights (Commission) in the case of *LoerschandNouvelle Association du Courrier v. Switzerland*⁵⁰ pointed out that accreditation should not be a condition for a journalist's access to information, but rather it should seek to facilitate such access. In this case, the Commission concluded that there is no violation of the right to "seek and receive information, as well as its publication, as guaranteed by Article 10" where accreditation is required for easier access to court information but where that same information can be accessed without accreditation, albeit less conveniently.⁵¹ However the wording of this judgment suggests that there would be a possible interference with journalists' freedom of expression where journalists would not have access to any information without accreditation. In the Applicant's case, the withdrawal of accreditation meant that he was unable to access information and continue his work because he had to leave the country within 15 days.

In addition, the UN Human Rights Committee, in the case of *Robert W. Gauthier v. Canada*, declared that "(...) since the accreditation system operates as a restriction of article 19 rights, its operation and application must be shown as necessary and proportionate to the goal in question and not arbitrary. The Committee does not accept that this is a matter exclusively for the State to determine. The relevant criteria for the accreditation scheme should be specific, fair and reasonable, and their application should be transparent."⁵²

According to the EU Human Rights Guidelines on Freedom of Expression Online and Offline, arbitrary denial of accreditation constitutes a violation of freedom of expression.⁵³ The withdrawal of accreditation combined with a deportation is a common practice of the Turkish authorities in the last several years. In January 2014, Azerbaijani journalist Mahir Zeynalov was deported from Turkey to Azerbaijan after being sued by the president of Turkey for posting links on Twitter to articles on a corruption scandal.⁵⁴ In September 2015, Turkey deported three foreign journalists in Diyarbakır, who were reporting on Turkey's Kurdish issue.⁵⁵ Two British Vice News journalists, reporter Jake Hanrahan and photojournalist Philip Pendlebury, reporting on the Turkish government's conflict with the Kurdistan Workers' Party, were detained on 27 August 2015 and then deported on 2 September 2015.⁵⁶ Mohammed Ismael Rasool, an Iraqi citizen who was with the British team as a fixer, was detained for four months.⁵⁷ Dutch journalist Frédérique Geerdink, who was known for being the only foreign reporter based in Diyarbakır and focusing on Kurdish issues, was deported by Turkish authorities following her second arrest in 2015.⁵⁸

⁵⁰ Application No. 23868/94 and 23869/94, (24 Feb. 1995).

⁵¹ *Id.* at ¶ 3.

⁵² Communication No. 633/1995, UN Doc. CCPR/C/65/D/633/1995, ¶ 13.6, (5 May 1999).

⁵³ Council of the European Union 1, 16 (12 May 2014), available at http://eeas.europa.eu/delegations/documents/eu_human_rights_guidelines_on_freedom_of_expression_online_and_offline_en.pdf.

⁵⁴ *Freedom of the Press 2016: Turkey*, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2015/turkey>.

⁵⁵ *Turkey Deports Dutch Journalist Accused of 'Aiding' Kurdish Militants*, The Guardian, (10 Sept. 2015), available at <http://www.theguardian.com/media/2015/sep/10/turkey-deports-dutch-journalist-frederike-geerdink>.

⁵⁶ *Vice News Journalists Back in UK After Release from Turkish Prison*, The Guardian, (6 Sept. 2015), available at <http://www.theguardian.com/media/2015/sep/06/vice-news-journalists-hanrahan-pendlebury-turkey-uk-return>.

⁵⁷ Jasper Jackson, *Vice Journalist Mohammed Rasool Released from Prison in Turkey*, The Guardian, (5 Jan. 2016), available at <http://www.theguardian.com/media/2016/jan/05/vice-journalist-mohammed-rasool-released-prison-turkey>.

⁵⁸ *Turkey Deports Dutch Journalist Accused of 'Aiding' Kurdish Militants*, *supra* note 55.

As a consequence of the withdrawal of the accreditation, Turkey arrested and deported the Applicant to Azerbaijan. Understanding the situation of repression against journalists in Azerbaijan and that the critical reporting of the Applicant may put him at risk, the Turkish authorities should have known that the Applicant would be arbitrarily detained once on Azerbaijani soil. In such circumstances, Turkey could have had recourse to the non-refoulement principle because, by extradition, Turkey would place the Applicant was in danger of having his rights under Article 5, 6 and 10 of the Convention violated.⁵⁹

VI. CONCLUSIONS

The present case reveals serious human rights violations by Turkey and Azerbaijan. The withdrawal of accreditation to journalists, combined with the deportation, seems to be a common practice of Turkish authorities. Such practice violates freedom of expression standards because it prevents journalists from accessing information and realizing their public watchdog role.

The deportation of the Applicant led to his arbitrary arrest and conviction in Azerbaijan. His detention was part of a larger crackdown on opposition leaders, civil society and journalists in the country. The Azerbaijani government has turned its judicial system into a weapon of persecution of independent voices through its use of politically-motivated criminal charges. The detention of the Applicant is particularly concerning as he was a journalist reporting on human rights abuses. Such reporters are explicitly recognized as falling under the definition of HRDs. According to numerous CoE and international instruments, HRDs should be granted special protection. In the Court's judicial review of a detention, the imprisonment of a HRD must be subjected to heightened scrutiny. In its previous case law, the Court stated that the pretrial detention of HRDs and political activists in Azerbaijan was politically driven and violated Articles 5(1), (3) and (4) of the Convention.

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⁵⁹ *Öcalan v. Turkey*, European Court of Human Rights, Application No. 46221/99, (12 May 2005); *Bozano v. France*, European Court of Human Rights, Application No. 9990/82, (2 Dec. 1987).