Republic of Azerbaijan v. Tofig Yagublu

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TRIALWATCH FAIRNESS REPORT

A CLOONEY FOUNDATION FOR JUSTICE INITIATIVE

ABOUT THE AUTHOR

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ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

TrialWatch is an initiative of the **Clooney Foundation for Justice**. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Index evaluating countries' justice systems.

The legal assessment and conclusions expressed in this report are those of the author and not necessarily those of the Clooney Foundation for Justice.

EXECUTIVE SUMMARY

Darryl Brown, O. M. Vicars Professor of Law at the University of Virginia School of Law and member of the TrialWatch Experts Panel, assigned this trial a grade of D:

Based on the Trial Monitor's notes, publicly available sources, and the trial court's judgment, the prosecution of Tofig Yagublu violated international fair trial rights specified in the ECHR and ICCPR. This case continued a pattern of arrests and prosecutions of Mr. Yagublu, a prominent journalist and political activist critical of the Azerbaijani government. Immediately after his arrest, government officials undermined Mr. Yagublu's presumption of innocence through public statements prejudging his guilt. Those statements, in combination with a biased trial process and the larger political context of government crackdowns against political opposition figures such as Mr. Yagublu, support the conclusion that this prosecution amounted to an abuse of judicial process intended to hinder and deter Mr. Yagublu's activities as a journalist and opposition leader. During the trial, Mr. Yagublu was periodically denied his rights to confront and call witnesses, to produce forensic evidence, to communicate with his lawyers, and otherwise to fully participate. Moreover, the trial judge's actions during the proceedings and written judgment of conviction strongly suggest that Mr. Yagublu was denied a fair and impartial tribunal. His prosecution and conviction represent a serious assault on the rule of law characterized by violations of Articles 6 and 18 of the European Convention on Human Rights. Because these violations led to his conviction and resulted in significant harm to Mr. Yagublu – most significantly his detention for more than a year on a prison sentence of four years and three months, before release on parole – the proceeding has been assigned a grade of "D" under the methodology described in the Annex.

From August to September 2020 the Clooney Foundation for Justice's TrialWatch initiative monitored the criminal trial of Mr. Tofig Yagublu, an Azerbaijani opposition leader and a former journalist. Mr. Yagublu was charged with and convicted of "hooliganism committed with the application of a weapon or object used as a weapon" for allegedly attacking an individual with a screwdriver. The evidence introduced by the prosecution, however, contained such inconsistencies and gaps that Mr. Yagublu's conviction was manifestly arbitrary, in violation of the presumption of innocence. Further, the trial itself entailed severe fair trial violations, such that the integrity of the proceedings was compromised. In conjunction with documented patterns of political repression and other instances in which the evidence suggests that the justice system has been weaponized

against Mr. Yagublu, there are grounds for concluding that the case was brought for improper motives – as a vehicle for political retaliation.

Background

Tofig Yagublu is a former journalist, former deputy chairman of the opposition Musavat Party, and senior member of the National Council of Democratic Forces, a coalition of opposition parties and activists. He has long been a prominent government critic and has repeatedly been subject to criminal and administrative prosecutions, including three cases in which the European Court of Human Rights condemned the authorities' conduct as unlawful.

The charges in the present case concern a car accident that occurred near a Baku bazaar on March 22, 2020. The prosecution alleged that Mr. Yagublu violated road traffic laws, with the result that his car crashed into another car driven by Elkhan Jabrailov. Mr. Jabrailov's wife was a passenger in the car. According to the prosecution, after the accident and once both cars had pulled over Mr. Yagublu proceeded to verbally and physically attack both Mr. Jabrailov and Mrs. Jabrailova, including by punching Mr. Jabrailov in the head and stabbing him with a screwdriver. The defense argued that it was Mr. Jabrailov who crashed into Mr. Yagublu's car, which was parked near the bazaar as he waited for his wife and her nephew to finish shopping. According to Mr. Yagublu, after the car accident the Jabrailovs exited their car and started to verbally attack Mr. Yagublu in an attempt to incite a confrontation – Mr. Yagublu maintained that he called the police and remained in his car until the police arrived.

Immediately following the car accident, Mr. Yagublu was taken to a police station and detained. The next day, March 23, 2020, Mr. Yagublu was formally charged and the Nizami District Court of Baku City ordered that he be placed in detention for three months, which was later extended for an additional two months.

Mr. Yagublu's trial commenced in August 2020 and on September 3, 2020, the Nizami District Court of Baku City found him guilty of hooliganism and sentenced him to four years and three months of imprisonment in a maximum-security penal colony. Although his appeals were denied, in July 2021 he was released on parole, with a probationary period of two years and six months. He has challenged his conviction before the European Court of Human Rights, where the case is pending.

Violations

From the outset the proceedings against Mr. Yagublu entailed prima facie violations of his fair trial rights. The day after the incident the spokesperson for the Minister of Internal Affairs made statements to the media pronouncing Mr. Yagublu guilty of causing the accident and attacking Mr. and Mrs. Jabrailov, in violation of Mr. Yagublu's right to the

presumption of innocence. The presumption of innocence is protected by the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights – Azerbaijan is party to both treaties.

Just as the beginning of the case was characterized by violations of the presumption of innocence, the end of the case, Mr. Yagublu's conviction, likewise violated this presumption. Under the presumption the prosecution bears the burden of proof at trial and doubts must be resolved in the defense's favor. In Mr. Yagublu's case, the trial court's judgment turned the presumption on its head, resolving all uncertainties and contradictions in the prosecution's favor and finding Mr. Yagublu guilty despite the prosecution's stark failure to meet its burden of proof.

First, the judgment failed to address significant discrepancies in the prosecution's case, including witness testimonies that were contradictory, inconsistent, or did not hold up under defense cross-examination. One witness who gave the police a written pretrial statement that he saw Mr. Yagublu assault Mr. Jabrailov admitted at trial that he did not understand the Latin alphabet and did not know the Azerbaijani word for screwdriver – even though his pretrial statement was written in the Latin alphabet and included the word screwdriver. Other prosecution witnesses, including a police officer who arrived at the scene, likewise used the word screwdriver in their written pretrial statements but did not understand the word when asked about it at trial. Still other witnesses struggled to recall key details regarding the accident and Mr. Yagublu's alleged attack on Mr. Jabrailov despite pretrial statements that they had directly observed the incident. This raised the question of whether the pretrial statements had been fabricated according to a template.

Mr. Jabrailov himself appeared confused about what had occurred, initially telling the police that he had been struck with a piece of iron and at trial stating that he had been struck with a screwdriver, amongst other numerous inconsistencies. And these are just a few examples of the flaws in the prosecution's case that emerged as the trial progressed. The judgment, however, states that that the court had no doubts about the credibility of the prosecution's evidence.

Second, the court dismissed or ignored all evidence presented by the defense. The judgment, for example, deems uncredible the testimony of Mrs. Yagublu – who stated that when she returned from the bazaar she saw her husband in their car and Mrs. Jabrailova attempting to open the car door – because of her spousal relationship with Mr. Yagublu. The judgment does not raise similar concerns in unequivocally accepting the testimony of Mr. and Mrs. Jabrailov. The judgment likewise does not even reference the testimony of two defense witnesses who indicated the police had falsified their pretrial statements to assert that they had observed the collision when in fact they had not. And the judgment rejects video footage introduced by the defense purporting to show Mr. Jabrailov's car pulling out of a parking spot and heading towards the bazaar some five minutes after the time that Mrs. Jabrailova called the police to report the alleged assault

by Mr. Yagublu. The judgment implausibly concludes that the footage is not accurate because it contradicts the prosecution's evidence and overarching version of events.

Third, the judgment does not evaluate broader questions raised by the defense, such as why security cameras did not capture the incident, why forensic reports found that the screwdriver had no fingerprints on it even though the prosecution alleged that Mr. Yagublu had wielded it without gloves, and why forensic reports found that Mr. Jabrailov had only mild injuries and no bleeding – despite police reports asserting that his clothing had been pierced by the screwdriver and that both the screwdriver and his clothing were bloodied. In sum, the court's wholesale rejection of the defense case, corresponding deference to the prosecution's case, and disregard of contradictory evidence was wholly unreasonable, and therefore violated the presumption of innocence.

In addition to violating the presumption of innocence, the trial violated key fair trial rights protected by the ICCPR and European Convention. The judge repeatedly interrupted or struck out defense questions during cross examination of prosecution witnesses, preventing the defense from probing inconsistencies in their testimony and violating Mr. Yagublu's right to call and examine witnesses; the judge denied defense requests to call relevant witnesses, including eyewitnesses to the scene at the bazaar, an additional violation of Mr. Yagublu's right to call and examine witnesses; Mr. Yagublu, who has hearing problems, was confined in a glass cage on the side of the courtroom for the duration of the trial, preventing him from following the trial and violating his right to effectively participate in the proceedings; and his confinement in the glass cage meant that he could not privately communicate with his lawyers during the trial, violating his right to defend himself through counsel.

Further, the judge's conduct – undermining defense examination of prosecution witnesses, preventing the defense from calling its own witnesses, denying Mr. Yagublu's requests to be allowed out of the glass cage and seated next to his lawyers, and convicting Mr. Yagublu despite the prosecution's failure to prove its case – raised concerns regarding the court's potential bias, in violation of Mr. Yagublu's right to an impartial tribunal.

Conclusion

Both the ICCPR and the European Convention protect defendants from trials brought for improper motives, such as political retaliation. In this case, there are significant grounds to believe that Mr. Yagublu was targeted because of his criticism of the government, effectively rendering his prosecution and conviction an abuse of process under the standards set forth by the European Convention. Among other things, the repeated violations of Mr. Yagublu's fair trial rights, the inconsistencies and gaps in the prosecution's case and indications that certain evidence may have been falsified, the hostile statements made by public officials prior to trial, documented government

suppression of dissenting voices through criminal prosecutions, and the targeting of Mr. Yagublu himself in other spurious administrative and criminal proceedings are indicia that the Azerbaijani authorities brought the case to silence and punish Mr. Yagublu for his continuous opposition to government policies.

BACKGROUND INFORMATION

A. POLITICAL & LEGAL CONTEXT

While the Constitution of the Republic of Azerbaijan establishes a monist system that gives direct effect to international treaties in domestic law[1] and ostensibly provides robust protection for fundamental rights, including the right to "freedom of thought and speech"[2] and "the right to participate without hindrance in the political life of the society and the State,"[3] human rights groups have found that in practice "the government remain[s] hostile to dissenting voices."[4]

President Ilham Aliyev and his New Azerbaijan Party (YAP) have been in power since 2003 and have gradually consolidated authority, including through what have been described as "rigged elections."[5] In 2016, Aliyev held a controversial referendum reportedly "accompanied by arrests and intimidation" that extended presidential terms (term limits had already been scrapped in a previous referendum) and gave him the power to dissolve parliament.[6] In 2018, presidential elections were held, which international election observers described as taking place in "'a restrictive political environment and under a legal framework that curtail[ed] fundamental rights and freedoms, which are pre-requisites for genuine democratic elections.'"[7] Aliyev won in a landslide with 86 percent of the vote.[8] In 2020, snap parliamentary elections were held during which election observers representing the Organization for Security and Cooperation in Europe and the

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[1] The Republic of Azerbaijan Constitution, 1995, Articles 12(2), 148, https://www.constituteproject.org/constitution/Azerbaijan_2016.pdf?lang=en.
[2] *Id.* at Article 47.
[3] *Id*. at Article 54.
[4] *See* Human Rights Watch, *World Report 2022: Azerbaijan, Events of 2021*, 2022, https://www.hrw.org/world-report/2022/country-chapters/azerbaijan. *See also* Amnesty International, *Azerbaijani Authorities Must Halt Crackdown On Dissent And Incarceration Of Activists In Conditions Prone To The Spread Of Covid-19,* May 27, 2020, https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR5524122020ENGLISH.pdf.
[5] Human Rights Foundation, *Azerbaijan's Aliyev Secures a Fourth Term in Rigged Elections*, April 12, 2018, available at https://hrf.org/azerbaijans-aliyev-secures-a-fourth-term-in-rigged-elections/.
[6] Reuters, *Azerbaijan Holds Referendum to Extend President's Term*, September 27, 2016, https://www.reuters.com/article/us-azerbaijan-presidency-term-idUSKCN11W1L7. *See also* Radio Free Europe, *Azerbaijani Parliament Approves Referendum On Presidential Term Limit*, December 26, 2008, https://www.rferl.org/a/Azerbaijani_Parliament_Approves_Referendum_On_Presidential_Term_Limit/1364057.html.
[7] Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *ODIHR Election Observation Mission Final Report*, 2018, https://www.osce.org/files/f/documents/2/5/388580_1.pdf.
[8] Radio Free Europe, *Azerbaijan's President Secures Fourth Term in Vote Criticized as Uncompetitive*, April 11, 2018, https://www.rferl.org/a/azerbaijan-aliyev-expected-win-reelection-april-11-vote/29158177.html.

Council of Europe stated that "significant procedural violations during counting and the tabulation raised concerns (about) whether the results were established honestly."[9] These observers further noted interference with "fundamental rights and freedoms" and ballot box stuffing.[10] Aliyev's YAP overwhelmingly prevailed.[11]

In addition to alleged manipulation of electoral processes, the authorities have reportedly weaponized the justice system against members of political opposition groups, such as the Azerbaijan Popular Front Party (APFP), and critics of the government, including journalists and human rights defenders.[12] In a 2018 case, for example, the European Court of Human Rights noted "a "troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law."[13] On the whole, in recent cases brought against Azerbaijan, the Court has repeatedly found violations of Article 18, which proscribes improperly motivated restrictions on rights protected by the European Convention, based on the Azerbaijani government's perversion of the justice

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[9] See Reuters, *Azeri Ruling Party Leads in Snap Parliamentary Vote*, February 9, 2020, https://www.reuters.com/article/us-azerbaijan-election-results/azeri-ruling-party-leads-in-snap-parliamentary-vote-idUSKBN2030RH.

[10] *Id*.

[11] EurasiaNet, *In Azerbaijan, Surprise Elections Yield Usual Results*, February 10, 2020, https://eurasianet.org/in-azerbaijan-surprise-elections-yield-usual-results.

[12] *See* Freedom House, *Freedom in the World 2022: Azerbaijan, Developments in 2021*, 2022, https://freedomhouse.org/country/azerbaijan/freedom-world/2022; Human Rights Watch, *Harassed, Imprisoned, Exiled*, October 20, 2016, https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbaijans-continuing-crackdown-government-critics.

[13] European Court of Human Rights*, Aliyev v. Azerbaijan*, App. Nos. 68762/14 and 71200/14, September 20, 2018, para. 223.

system.[14] The Council of Europe's Parliamentary Assembly has also condemned the detention and conviction of individuals for "political reasons" and called for their release.[15]

Notably, the authorities regularly use administrative cases, which entail fewer due process protections than criminal cases but can still lead to detention, to intimidate and dissuade individuals from engaging in activism.[16] These administrative offenses include minor hooliganism,[17] violations of legislation on organizing and conducting demonstrations and pickets,[18] showing insubordination to the police or military,[19] and showing insubordination to a court.[20]

At the same time, the government has used the criminal law to target more prominent critics, in cases that are often described by outside observers as "spurious."[21] Common

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[14] *See* European Court of Human Rights, *Ibrahimov and Mammadov v. Azerbaijan*, App. Nos. 63571/16 and others, February 13, 2020, para. 157 ("the Court finds that the restriction of the applicants' liberty were imposed for purposes other than those prescribed by Articles 5 § 1 (c) of the Convention and the actual purpose of the impugned measures was to punish the applicants for their painting graffiti on the statue of the former president of the country and expressing throughout political slogans against the government."); European Court of Human Rights, *Natig Jafarov v. Azerbaijan*, App. No. 64581/16, November 7, 2019, para. 70 ("the totality of the above factors indicates that the actual ulterior purpose of the impugned measures was to punish the applicant for his active political engagement and to prevent him from participating as a representative of the opposition in the referendum campaign. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was imposed for purposes other than those prescribed by Article 5 § 1 (c) of the Convention."); European Court of Human Rights, *Aliyev v. Azerbaijan,* App. Nos. 68762/14 and 71200/14, September 20, 2018, para. 215 ("The totality of the above circumstances – specifically, the applicant's status as a lawyer representing applicants before the Convention institutions, the nature and substance of the charges brought against him, the statements made by public officials, the arbitrary manner in which the search and seizure took place, the general context of the legislative regulation of NGO activity, the repercussions on the applicant's right to freedom of association and the general situation concerning human-rights activists in the country – indicates that the authorities' actions were driven by improper reasons and the actual purpose of the impugned measures was to silence and to punish the applicant for his activities in the area of human rights as well as to prevent him from continuing those activities … In the light of these considerations, the Court finds that the restrictions of the applicant's rights were imposed for purposes other than those prescribed by Articles 5 § 1 (c) and 8 § 2 of the Convention.")

[15] Parliamentary Assembly of the Council of Europe, *Reported Cases of Political Prisoners in Azerbaijan*, Resolution 2322, January 30, 2020, http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=28584&lang=en.

[16] Institute for Democratic Initiatives, *Policy Paper on the Analysis of the Legislation Regarding Administrative Detentions and on the Status of Ill-Treatment*, 2019, https://www.idi-aze.org/files/pdf/2021-11-22/zm7Ila9sS2za8Cw2tg0AbhPFRQcZjdDE6iya31Op.pdf.

[17] The Code of the Republic of Azerbaijan on Administrative Violations, 2000, Article 296.

[18] *Id*. at Article 298.

[19] *Id*. at Article 310.

[20] *Id*. at Article 311.

[21] *See* Human Rights Watch, *Harassed, Imprisoned, Exiled*, October 20, 2016, https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbaijans-continuing-crackdown-government-critics.

charges include illegal possession of drugs or weapons, tax evasion, hooliganism, and inciting hatred and violence.[22] These cases, unlike administrative cases, can result in long prison sentences.

In 2016, for example, Mammad Ibrahim, an advisor to the APFP chairman, was sentenced to three years in prison on hooliganism charges.[23] In 2021, at least 15 APFP leaders and activists were convicted of, variously, hooliganism, incitement, and other criminal charges.[24] In late 2022, the Institute for Peace and Democracy reported that there were at least 99 political prisoners in Azerbaijan.[25]

There have also been reports of physical maltreatment and torture of detainees.[26] In 2017, a popular blogger, Mehman Huseynov, was sentenced to two years in prison for libel after publicly asserting that police officers had "attacked [him] blindfolded and gagged him with towels, forced a bag over his head, used an electroshock weapon on his groin, and punched him, bloodying his nose."[27]

Targeting of Journalists

The government has regularly harassed and criminally prosecuted journalists. According to the Reporters Without Borders (RSF) 2023 survey of countries' respect for freedom of the press, Azerbaijan ranked 151 out of 180 countries.[28] As stated by RSF, President Aliyev has "sought to ruthlessly to silence any remaining critics," with the result that "virtually the entire media sector is under official control."[29]

In June 2020, for example, Afgan Sadygov, editor of one of the only independent websites left, was sentenced to seven years in prison on charges of extortion.[30] The Committee to Protect Journalists described the case as "fabricated" and in retaliation for his reporting.[31] Days later, fellow independent news editor Polad Aslanov was sentenced to 16 years in

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[22] *See id*.
[23] *Id*.
[24] Human Rights Watch, *World Report 2022: Azerbaijan, Events of 2021*, 2022, https://www.hrw.org/world-report/2022/country-chapters/azerbaijan#ab6e07.
[25] The Azeri Times, *Updated List of Political Prisoners in Azerbaijan Includes the Names of 99 People,* October 1, 2022, https://azeritimes.com/2022/10/01/updated-list-of-political-prisoners-in-azerbaijan-includes-the-names-of-99-people/.
[26] Human Rights Watch, *Torture Is 'Systemic and Endemic' in Azerbaijan,* July 25, 2018*,* https://www.hrw.org/news/2018/07/25/torture-systemic-and-endemic-azerbaijan.
[27] Human Rights Watch, *Jailing the Messenger in Azerbaijan*, March 7, 2017, https://www.hrw.org/news/2017/03/07/jailing-messenger-azerbaijan.
[28] Reporters Without Borders, *Azerbaijan*, 2023, https://rsf.org/en/country/azerbaijan.
[29] *Id*.
[30] Committee to Protect Journalists, *Azerbaijani Journalist Afgan Sadygov Sentenced to Seven Years in Prison*, November 4, 2020, https://cpj.org/2020/11/azerbaijani-journalist-afgan-sadygov-sentenced-to-seven-years-in-prison/.
[31] *Id*.

jail on treason charges, with the government alleging that he sold secrets to Iran.[32] RSF characterized the charges as "trumped-up," stating that Aslanov was "convicted in a completely arbitrary manner."[33] Also in late 2020, human rights defender and journalist Elchin Mammad was convicted of theft and illegal possession of weapons and sentenced to four years in prison.[34] As with the other cases, Amnesty International deemed the charges "trumped up" and "part of the continuing relentless crackdown on all dissent in Azerbaijan."[35]

And this reported trend has not shown signs of abating. In September 2022, independent journalist Avaz Zeynalli was arrested and detained on bribery charges: his outlet regularly reports on human rights abuses and corruption.[36] He is currently on trial. In addition to criminal prosecutions, journalists have been threatened and physically attacked. In May 2022, Ayten Mammadova, who often covers trials that implicate human rights, was assaulted in her apartment building by a man who held a knife to her throat and ordered her to stop her reporting.[37] In June 2023, Azerbaijani police beat and detained journalists covering environmental protests.[38]

Notably, in late 2021 Azerbaijan passed a law requiring all journalists to register with the authorities, which entails providing personal information such as one's home address and bank account details, and to adhere to an "'objective'" interpretation of facts and events."[39] The law further required media outlets to stop accepting foreign funding and prohibited outlets from being foreign-owned.[40]

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[32] Reporters Without Borders, *Azerbaijan: Inhuman Treatment is Putting Imprisoned Journalist's Life in Danger*, February 2021, https://rsf.org/en/azerbaijan-inhuman-treatment-putting-imprisoned-journalist-s-life-danger.

[33] *Id*.

[34] Voice of America, *Azerbaijan Denies Parole Appeal of Jailed Journalist*, July 15, 2022, https://www.voanews.com/a/azerbaijan-denies-parole-appeal-of-jailed-journalist/6659412.html.

[35] Amnesty International, *Human Rights Defender Sentenced to Prison: Elchin Mammad*, November 13, 2020, https://www.amnesty.org/en/documents/eur55/3340/2020/en/.

[36] Voice of America, *Azerbaijan Detains a Journalist and His Lawyer*, September 13, 2022, https://www.voanews.com/a/azerbaijan-detains-a-journalist-and-his-lawyer/6746340.html.

[37] Institute for War and Peace Reporting, *Azerbaijani Journalist Threatened Over High-Profile Trial*, May 13, 2022, https://iwpr.net/global-voices/azerbaijani-journalist-threatened-over-high-profile-trial.

[38] Committee to Protect Journalists, *Azerbaijan Police Detain, Beat Journalists Covering Environmental Protest*, June 30, 2023, https://cpj.org/2023/06/azerbaijan-police-detain-beat-journalists-covering-environmental-protest/

[39] Radio Free Europe, *A New Draconian Media Law in Azerbaijan Gives the Government the Power to Decide What's News*, February 20, 2022, https://www.rferl.org/a/azerbaijan-media-law-journalism-objective/31711614.html.

[40] *Id*.

The Judiciary and Due Process Violations

The U.S. Department of State has described the independence and impartiality of the judiciary in Azerbaijan as a serious concern, citing "credible allegations" that judges and prosecutors take instructions from the executive branch in politically sensitive cases.[41] According to the Department of State's 2022 report on countries' human rights practices, "[t]he judiciary remained largely corrupt and inefficient and lacked independence. Many verdicts were legally unsupportable and largely unrelated to the evidence presented during a trial, with outcomes frequently appearing predetermined."[42]

The Helsinki Foundation for Human Rights has likewise observed that the separation of powers "no longer exists in Azerbaijan,"[43] partially because the Minister for Justice heads the Judicial Legal Council – the institution that manages the appointment of judges.[44] According to the Helsinki Foundation, in trials of government critics "courts usually embrace the prosecution's (written) submissions, which … limits the judiciary's role to one of mere automatic endorsement of the prosecution's requests."[45]

Notably, Freedom House's 2022 annual survey of countries' respect for civil and political rights awarded Azerbaijan zero out of four points in the areas of both independence of the judiciary and due process, stating, respectively, that "the courts' lack of political independence is especially evident in the many trumped-up or otherwise flawed cases brought against opposition figures, activists, and critical journalists," and that "political detainees have reported restricted access to legal counsel, fabrication and withholding of evidence, and physical abuse to extract confessions."[46]

B. CASE HISTORY

Tofig Yagublu, age 62, is a former journalist, former deputy chairman of the opposition Musavat Party, and senior member of the National Council of Democratic Forces, a

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[41] U.S. Department of State, *2022 Country Reports on Human Rights Practices: Azerbaijan*, 2023, https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/.
[42] *Id*.
[43] Helsinki Foundation for Human Rights, *The Functioning of the Judicial System in Azerbaijan and its Impact on the Right to a Fair Trial of Human Rights Defenders*, September 2016, https://www.nhc.nl/assets/uploads/2017/07/Functioning-of-the-Judicial-System-in-Azerbaijan-and-its-Impact-on-the-Right-to-a-Fair-Trial.pdf.
[44] *Id*.
[45] *Id*.
[46] Freedom House, *Freedom in the World 2022: Azerbaijan, Developments in 2021*, 2022, https://freedomhouse.org/country/azerbaijan/freedom-world/2022.

coalition of opposition parties and activists.[47] He has long been a prominent government critic.[48]

Prior Targeting of Mr. Yagublu

The Azerbaijani authorities have repeatedly harassed Mr. Yagublu over the course of his career, including through criminal prosecutions.

In 1998, for example, Mr. Yagublu was criminally convicted of participating in an unauthorized mass protest and given a two-year suspended sentence.[49] In 2013, while he was working for the independent *Yeni Musavat* newspaper, he was arrested when he went to cover rioting in the town of Ismayilli.[50] He was then charged with organizing or participating in actions causing public disorder and with resistance to or violence against public officials that endangers their lives or health.[51] The authorities alleged that he had incited a group of individuals to, among other things, enter a government building, disobey police orders, resist police officers with violence, and disrupt traffic.[52] He was placed in pretrial detention for a period of two months, which was subsequently extended three times, first by a further two months, then a further three months, and finally by a further three months.[53]

Mr. Yagublu's trial began in November 2013 and he was convicted in March 2014, along with fellow opposition figure and co-defendant Ilgar Mamadov. He was sentenced to five years of imprisonment. (Mr. Mamadov received a seven-year sentence.).[54] Both men applied separately to the European Court of Human Rights, which found that Azerbaijan had violated their rights. In the case of Mr. Yagublu, the Court specifically held that his arrest and detention had violated Article 5 of the European Convention (the right to liberty and security) because the government failed to prove that there was "reasonable

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[47] Human Rights Watch, *Azerbaijan: Opposition Leader Arrested*, March 25, 2020, https://www.hrw.org/news/2020/03/25/azerbaijan-opposition-leader-arrested.
[48] *Id*.
[49] Balcani Caucaso, *Azerbaijan: the Yagublu Affair*, September 14, 2020, https://www.balcanicaucaso.org/eng/Areas/Azerbaijan/Azerbaijan-the-Yagublu-affair-204838.
[50] European Court of Human Rights, *Yagublu v. Azerbaijan*, App. No. 31709/13, November 5, 2015, paras. 7-11.
[51] *Id*. at paras. 15-17. The first charge was later replaced with the charge of organizing "mass disorder", which carried a heavier sentence.
[52] *Id*. at para. 17.
[53] Id. at paras. 18-38.
[54] Amnesty International, *Guilty of Defending Rights: Azerbaijan's Human Rights Defenders and Activists Behind Bars*, March 4, 2015, https://www.amnesty.org/download/Documents/EUR5510772015ENGLISH.pdf.

suspicion" that he committed a criminal offence.[55] After spending two years in prison, Mr. Yagublu was released in March 2016 via a presidential pardon.[56]

In addition to the criminal cases initiated against Mr. Yagublu, he has also been subject to numerous administrative arrests.[57] In October 2019, for example, Mr. Yagublu was arrested for attending an unauthorized protest in central Baku and was sentenced to one month of imprisonment.[58] Mr. Yagublu alleged that during the arrest he was beaten by police and ordered to make a public apology.[59] According to Human Rights Watch, there were no "effective investigations" into these allegations.[60] In 2021, the European Court ruled that two instances in which Mr. Yagublu was arrested and detained for administrative offenses in 2012 were unlawful, stating that the domestic courts "ignored the applicant's submissions that the arrest had been politically motivated, and merely recapitulated the circumstances and the charges as presented by the police" and that proceedings "had pursued aims unrelated to the formal ground relied on to justify the deprivation of liberty, and implied an element of bad faith and arbitrariness."[61]

Mr. Yagublu's Hooliganism Trial

The charges in this case arose from an altercation that occurred on March 22, 2020. The facts, as recounted by Mr. Yagublu, the government, and other witnesses, were disputed. These differing accounts are described below.

According to Mr. Yagublu, he drove to a bazaar in the Nizami district of Baku at around 3pm with his wife, Maya Yagublu, and her nephew, Isa Ismayilov.[62] While his wife and her nephew went to the bazaar, he parked the car on the right side of the road.[63] Another car then hit the left side of his car and he remained in the car, waiting for the authorities to arrive.[64] A man and a woman exited the other car, confronted Mr. Yagublu, and

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[55] European Court of Human Rights, *Yagublu v. Azerbaijan*, App. No. 31709/13, November 5, 2015, para. 62.
[56] Freedom House, *Freedom in the World 2017: Azerbaijan, Developments in 2016*, 2017, https://freedomhouse.org/country/azerbaijan/freedom-world/2017.
[57] *See* European Court of Human Rights, *Yagublu v. Azerbaijan,* App. No. 69686/12, July 15, 2021.
[58] Human Rights Watch, *Azerbaijan: Opposition Leader Arrested*, March 25, 2020, https://www.hrw.org/news/2020/03/25/azerbaijan-opposition-leader-arrested.
[59] Human Rights Watch, *Azerbaijan: Peaceful Rallies Dispersed Violently*, October 22, 2019, https://www.hrw.org/news/2019/10/22/azerbaijan-peaceful-rallies-dispersed-violently.
[60] Human Rights Watch, *Azerbaijan: Opposition Leader Arrested*, March 25, 2020, https://www.hrw.org/news/2020/03/25/azerbaijan-opposition-leader-arrested.
[61] *See* European Court of Human Rights, *Yagublu v. Azerbaijan,* App. No. 69686/12, July 15, 2021, paras.56-60.
[62] Baku City Nizami District Court, Judgment, September 3, 2020 (hereinafter "Judgment").
[63] *Id*.
[64] *Id*.

demanded that he get out of his car, but he refused.[65] He called the police.[66] Shortly after, his wife and her nephew – and then the police – arrived at the scene of the incident.[67]

According to the government and the alleged victims, Mr. Yagublu was parked outside the bazaar and drove from the right side of the road to the left side of the road in violation of traffic laws.[68] As a result, he crashed into Elkhan Jabrailov's car, which had been driving in the same direction.[69] Mr. Jabrailov's wife, Javahir Jabrailova, was in the passenger seat.[70] After the collision, Mr. Yagublu got out of the car and started shouting at Mr. Jabrailov, then punched Mr. Jabrailov in the head and stabbed him in the right shoulder with a screwdriver.[71] Mrs. Jabrailova called the police.[72] When she got out of the car to try to stop Mr. Yagublu, Mr. Yagublu verbally attacked her and threw open the door of his car to hit her with it.[73] Mr. Yagublu's family members and the police then arrived.[74] The attack lasted for twenty to twenty-five minutes after the car collision.[75] As described below, inconsistencies in the physical evidence and witness testimonies' undermined this account of events.

Mr. Yagublu was detained as a suspect on March 22, 2020, under Article 221.3 of the Criminal Code, and the next day a court imposed three months of pretrial detention.[76] Article 221 proscribes hooliganism, defined as "deliberate actions roughly breaking a social order, expressing obvious disrespect for a society, accompanying with application of violence on citizens or threat of its application, as well as destruction or damage of another's property." It provides for a sentence of up to one year in prison. Subsection 3 provides for an enhanced sentence of three to seven years in prison where a weapon is used. On July 13, Mr. Yagublu was formally indicted under Article 221.3.[77]

Mr. Yagublu's trial started soon thereafter, on August 5. He was confined to a glass cage during the hearings.[78] The trial was functionally closed to the public, with the court allowing a maximum of 10 people in the room (the parties and members of the court)

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[65] *Id*.
[66] Id.
[67] *Id*. While the judgment recounts Mr. Yagublu stating that the police arrived first, it also recounts Mrs. Yagublu stating that she and Mr. Ismayilov arrived first, and at trial Mr. Yagublu likewise stated as much.
[68] *Id*.
[69] *Id*.
[70] *Id*.
[71] *Id*.
[72] *Id*.
[73] *Id*.
[74] *Id*.
[75] *Id.*
[76] *Id*.
[77] Indictment, July 5, 2020.
[78] *See* Monitor's Notes, August 5, 2020; Monitor's Notes, August 7, 2020.

based on COVID restrictions.[79] The defense requested Mr. Yagublu be removed from the glass enclosure and that the hearings be opened multiple times throughout the trial, but these requests were dismissed by the judge.[80]

At the first hearing on August 5, the defense petitioned to introduce video evidence it obtained from a shopkeeper at the bazaar to show that Mr. Jabrailov's car was still parked near the bazaar at the time that the Jabrailovs alleged that the car accident and confrontation took place, and that the car only started moving towards where Mr. Yagublu was parked more than ten minutes after the alleged incident: the Jabrailovs had stated that the incident occurred around 3:15 pm; according to the investigation materials, Mrs. Jabrailova called the police at 3.21 pm; and the video purportedly showed Mr. Jabrailov's car starting to drive out of the parking spot at 3:25 pm. (Notably, the make of the car is clear in the video and matches Mr. Jabrailov's car, but the license plate is unclear.)[81] The defense further asked the court to subpoena mobile records from the Jabrailovs, asking: "How can a person know 4 minutes beforehand that someone will hit his car?"[82] The judge dismissed the petitions on the basis that they could be considered at a later stage.[83] (The judge subsequently denied the defense petition for those mobile records.)[84]

The defense then petitioned to summon additional witnesses, including an individual who was questioned as a witness at the scene of the incident as well as Mr. Yagublu's wife and her nephew. The defense further requested an expert examination into why the forensic reports had found that the screwdriver pierced holes in Mr. Jabrailov's clothing despite a lack of corresponding injuries to his body.[85] The court dismissed these petitions on the basis that they could be considered during the examination of evidence.[86] The judge additionally stated that at this stage he would deny all further requests for the introduction of evidence by Mr. Yagublu and his lawyers. The prosecutor then read the indictment and Mr. Yagublu pled not guilty.[87]

At the hearing on August 7, the alleged victim, Elkhan Jabrailov, testified.[88] He stated that he was at the bazaar with his wife on the day of the incident and got stuck in a traffic jam.[89] When he passed by Mr. Yagublu's car, Mr. Yagublu drove into him.[90] Mr. Jabrailov

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[79] See *id*.
[80] *See id*.
[81] Monitor's Notes, August 5, 2020.
[82] *Id*.
[83] *Id*.
[84] Monitor's Notes, September 1, 2020.
[85] Monitor's Notes, August 5, 2020.
[86] *Id*.
[87] *Id*.
[88] Monitor's Notes, August 7, 2020.
[89] *Id*.
[90] *Id*.

got out of his car and Mr. Yagublu hit him with his fist and then also hit him with a screwdriver four times on the right side of his body; the two struggled and the screwdriver was eventually thrown to the side.[91] Mrs. Jabrailova called the police.[92] According to Mr. Jabrailov, the police arrived five to ten minutes later.[93] In his testimony, Mr. Jabrailov provided several details that did not match his original statement to the police. Among other things, in his original statement he said that Mr. Yagublu hit him with a piece of iron, but in court he stated that it was a screwdriver.[94] Further, his courtroom testimony itself contained inconsistencies and gaps. On examination by the prosecution, for example, he indicated that he did not see his wife get hit by the car door, but during cross-examination he stated that he did indeed witness the incident.[95] He was also unable to explain why there were marks on his clothes from the alleged assault but not on his body, and he misstated what Mr. Yagublu was wearing on the day in question.[96] The judge repeatedly cut off defense inquiries, including on subjects such as how the collision occurred, the nature of Mr. Jabrailov's injuries, and Mr. Yagublu's alleged attack on Mr. Jabrailov's wife.[97]

Mrs. Jabrailova also testified on August 7.[98] (The court denied the defense request to exclude Mrs. Jabrailova from the courtroom during her husband's testimony, so she testified immediately after having heard her husband's version of events.)[99] Mrs. Jabrailova stated that Mr. Yagublu's car hit their car, that Mr. Yagublu got out and insulted both of them with "obscene' language, and that Mr. Yagublu hit her husband.[100] Mrs. Jabrailova then exited the car to separate them and called the police.[101] She refused to answer certain defense questions regarding the series of events leading to the cars' collision.[102]

On August 12 and 14, two bystander witnesses who gave statements during the investigation testified that they saw Mr. Yagublu assault Mr. Jabrailov. However, Elshan Mirzoyev, the first witness, who testified on August 12, ultimately stated that he signed various documents given to him by the police and did not know their contents.[103] The second witness, Arza Babayeva, testified on August 14 that she heard a car collision and

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[91] *Id*.
[92] *Id*.
[93] *Id.*
[94] *Id*.
[95] *Id*.
[96] *Id*.
[97] *Id*.
[98] *Id*.
[99] *Id*.
[100] *Id*.
[101] *Id*.
[102] *Id*.
[103] Monitor's Notes, August 12, 2020.

then saw Mr. Yagublu assault Mr. Jabrailov and also saw Mr. Yagublu hit Mrs. Jabrailova with his car door.[104] The defense argued that in her original statement she had asserted that she actually saw the collision.[105] During Ms. Babayeva's testimony, other inconsistencies emerged; she originally stated, for example, that she went to the bazaar with only her son but later stated that a friend was also present.[106]

Next, three police officers testified about responding to the scene of the incident. The first officer, Ilgar Mehdiyev, testified on August 14 that he arrived ten minutes after the police were called and found Mr. Jabrailov with injuries on his body.[107] He struggled to recall details of the scene.[108] The second officer, Elkhan Jafarov, testified on August 19 that when he arrived Mr. Yagublu was very "aggressive" and swearing and that he saw "cuts" on Mr. Jabrailov. (This contradicted the forensic medical report introduced by the prosecution finding that Mr. Jabrailov had only bruises and no bleeding.)[109] Upon cross-examination, Mr. Jafarov stated he could not remember how the cars were situated and did not recognize the word for screwdriver in Azeri, contradicting his pretrial statement in which he used that same word.[110] Mr. Jafarov further stated that when he arrived at the scene the alleged victims were sitting down, contradicting his pretrial statement that they were standing up.[111] Based on the above and other conflicting testimony, the defense raised concerns that his statement was falsified and written by another individual, and petitioned to retrieve phone location data to determine whether Mr. Jafarov was actually at the scene of the incident.[112] This request was dismissed by the judge without explanation.[113]

Lastly, the third officer, Malik Manafov, testified on August 21 that he arrived after the accident occurred.[114] The defense contended that Mr. Yagublu saw Mr. Manafov at the scene watching him before the incident occurred, and petitioned for the court to subpoena his mobile phone records to retrieve phone location data.[115] The judge refused the request on the grounds that he could not compel Mr. Manafov to provide his phone

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[104] Monitor's Notes, August 14, 2020.
[105] *Id*.
[106] *Id*.
[107] *Id*.
[108] *Id*.
[109] Monitor's Notes, August 19, 2020.
[110] *Id*.
[111] *Id.*
[112] *Id*.
[113] *Id*.
[114] Monitor's Notes, August 21, 2020.
[115] *Id*.

number.[116] After this testimony, Mr. Yagublu became ill and the trial was adjourned; the defense requested that an ambulance be called but the court refused.[117]

When the trial resumed on August 25, a bystander at the scene who had been located through a photo that someone took of the incident, 15-year-old Ismail Mirzoyev, testified that he witnessed Mr. Yagublu hit Mr. Jabrailov and also saw Mr. Yagublu taking pictures of the scene on his phone.[118] He could not recall many details that had been included in his previous statement to the police and repeatedly contradicted himself.[119] Because of his memory lapses, contradictions, and young age, the defense requested a psychological exam of Mr. Mirzoyev, which the judge denied.[120] The defense pointed out that although Mr. Mirzoyev stated that the photo had been taken before the incident occurred, the photo also showed a police officer present.[121]

The prosecution next called as witness Novruz Novruzov, despite the fact that the witness list and investigation documents instead identified the individual scheduled to testify as one "Javanshir Novruzov."[122] The defense argued that Novruz was not the same person and the judge adjourned the hearing.[123] On August 26, the court allowed Novruz Novruzov to testify and he stated that he witnessed a confrontation between Mr. Yagublu and Mr. Jabrailov.[124] When the defense noted that according to the case file his identity had been ascertained from a photograph of the scene, the witness responded that he was not in the photo in question.[125] Further, he testified that he could not read or write in the Latin alphabet – even though his signed police statement was in the Latin alphabet and the statement itself said that it had been written by Javanshir Novruzov.[126] On questioning by the defense, he additionally did not recognize the Azeri word for screwdriver, although that word was used in the statement that he purportedly gave to the police.[127] At the conclusion of his testimony, he acknowledged that he had not observed any physical altercation,[128] prompting the defense to reiterate that the individual testifying was a different witness from the "Javanshir Novruzov" cited in the case file. The judge then announced that he had received a statement from a witness claiming that he could not come to court due to illness. When the defense requested evidence confirming

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[116] *Id*.
[117] *Id*.
[118] Monitor's Notes, August 25, 2020.
[119] *Id*.
[120] *Id.*
[121] *Id*.
[122] *Id*.
[123] *Id*.
[124] Monitor's Notes, August 26, 2020.
[125] *Id*.
[126] *Id*.
[127] *Id*.
[128] *Id*.

the witness's illness, or that the witness be compelled to appear in court at a later date, the judge refused.[129]

On August 28, prosecution witness Ali Agayev testified that he had observed an argument between Mr. Yagublu and Mr. Jabrailov, but on cross-examination by the defense he could not recall key details and seemed to indicate that he had merely heard a collision but did not see anything.[130] This account conflicted with the statement he gave to the police during the investigation, which said that he witnessed the cars collide and also saw Mr. Yagublu assault Mr. Jabrailov.[131] When the defense attempted to probe these contradictions, the judge cut off numerous questions.[132] The defense formally objected to the restrictions on cross-examination, alleging that the judge was biased toward the prosecution.[133] The judge dismissed the objection without explanation.[134]

Subsequently, the court asked Mr. Yagublu to testify. He said he would not do so until the court responded to the remaining defense petitions, which included petitions to introduce additional evidence.[135] The court approved defense requests for examination of Mr. and Mrs. Yagublu's mobile phones by experts (the defense alleged that both Mr. and Mrs. Yagublu had taken photos and videos of the scene but that the phones were taken by the police and tampered with, and exculpatory evidence deleted), to introduce the aforementioned video footage of the incident, and to call additional witnesses.[136] The judge denied the defense requests to obtain the alleged victims' mobile phone records without explanation.[137]

Next, a defense witness, Mirmohammad Mahmudzadeh, testified that he was at the bazaar on the day of the incident when he was approached by policemen, who brought him to the scene.[138] According to Mr. Mahmudzadeh, the police informed him that there had been an altercation approximately one hour prior that involved a screwdriver.[139] He further testified that the police instructed him to sign a statement claiming that he had witnessed the collision of the cars even though he did not see anything himself.[140]

At the next hearing on September 1, the defense announced that it had sent a complaint about the case to the Baku Court of Appeal arguing that the charges were fabricated and

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[129] *Id.*
[130] Monitor's Notes, August 28, 2020.
[131] *Id*.
[132] *Id*.
[133] *Id*.
[134] *Id*.
[135] *Id*.
[136] *Id*.
[137] *Id*.
[138] *Id*.
[139] *Id*.
[140] *Id*.

the proceedings unlawful.[141] According to the defense, the complaint further stated, among other things, that interested observers were not allowed into the courtroom without justification, that defense motions regarding the presentation of evidence had been unjustifiably denied, that Mr. Yagublu was confined to a glass enclosure throughout the trial in contravention of precedent from the European Court of Human Rights, and that the prosecution had called a different witness at trial than the actual individual who had been questioned during the investigation (Mr. Novruzov).[142] The defense requested that the court halt the proceedings until the appellate court decided on the complaint.[143] The court rejected this request.[144]

Two final witnesses testified for the defense. Shakir Agayev testified that he arrived at the scene after the incident had already occurred, and that the police told him that Mr. Yagublu's car had hit Mr. Jabrailov's car.[145] According to Mr. Agayev, he signed a statement attesting only to damage on the cars.[146] The defense argued that the prosecution had instead introduced a written statement from Mr. Agayev stating that he witnessed the collision.[147] The defense then petitioned to call as a witness a police investigator who helped lead the investigation and also asked that the 'real' Javanshir Novruzov be called to testify.[148] The judge dismissed these requests without explanation.[149]

Next, Mr. Yagublu's wife, Maya Yagublu, testified about the day of the incident. She stated that she and her nephew were at the bazaar when her husband called them to return to their car because it had been hit by another car. Upon her return, she saw Mrs. Jabrailova approach their car and attempt to open the doors.[150] She stated that she pulled Mrs. Jabrailova, who was cursing at her, away from the car and entered it herself instead, waiting with Mr. Yagublu for police to arrive.[151] When the police arrived, one officer got into their car and they drove to the police station, where the police took her phone out of her bag without her consent.[152] During Mrs. Yagublu's testimony, a dispute arose about the timing of her arrival at the scene, with Mr. Jabrailov stating that she arrived after the police.[153]

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[141] Monitor's Notes, September 1, 2020.
[142] *Id*.
[143] *Id*.
[144] *Id*.
[145] *Id*.
[146] *Id*.
[147] *Id.*
[148] *Id*.
[149] *Id*.
[150] *Id*.
[151] *Id*.
[152] *Id*.
[153] *Id*.

The defense then again requested that Mr. and Mrs. Yagublu's phones be examined by experts, stating that when the phones were taken from them after Mr. Yagublu's arrest, the police tampered with them and deleted exculpatory evidence, such as videos from the scene.[154] The judge denied this motion without explanation, despite having approved it at the previous hearing, and announced the conclusion of the trial.[155] The prosecution gave closing remarks, requesting a prison sentence of four years and six months.[156] When the court asked the defense to provide its closing statement, counsel stated that the defense "protested against this lawlessness" and deemed the proceedings "absurd."[157] During this exchange, Mr. Yagublu asked to testify. The court rejected this request, stating that Mr. Yagublu had refused an earlier opportunity to testify.[158]

At the final hearing on September 2, Mr. Yagublu was given an opportunity to testify. During his testimony, he called the charges and trial "fake" and "slander,"[159] stating that the previous year government officials had threatened him with arrest if he continued his political activity and criticism of the president.[160] According to Mr. Yagublu, if he had assaulted Mr. Jabrailov as alleged, there would have been surveillance or other video footage. He further argued that the prosecution's evidence contained inconsistencies, including that Mr. Jabrailov testified that he did not show the injuries under his jacket to anyone at the scene, contradicting testimony from the police that they saw injuries when they arrived; that there were holes in Mr. Jabrailov's jacket that allegedly resulted from the screwdriver attack but no correspondingly severe injuries to his person; and that the government's allegation that he attacked Mr. Jabrailov for over twenty minutes and that the screwdriver had droplets of blood (according to investigation reports introduced by the prosecution) did not match the minimal injuries that were subsequently documented.[161] As Mr. Yagublu continued to criticize the prosecutor and court's conduct, the judge warned him that he could only speak about the merits of the case, eventually cutting him off and ending the hearing.[162]

The court's judgment, issued on September 3, found Mr. Yagublu guilty of hooliganism under Article 221.3 of the Criminal Code and sentenced him to four years and three months of imprisonment (with credit for time served in pretrial detention).[163] According to the court, the prosecution established that Mr. Yagublu violated public order and showed a "clear disrespect for society" by physically attacking Mr. Jabrailov and his wife, and that

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[154] *Id*.
[155] *Id*.
[156] *Id*.
[157] *Id*.
[158] *Id*.
[159] Monitor's Notes, September 2, 2020.
[160] *Id*.
[161] *Id*.
[162] *Id*.
[163] Judgment.

an enhanced sentence was appropriate given his use of a screwdriver to do so. (As noted above, an increased sentence can be applied where a weapon is used.)[164]

The judgment unequivocally accepts the prosecution's arguments and evidence, stating that Mr. Yagublu's guilt was "proved with the testimony of victims and witnesses and other information gathered on the case," and the court "does not doubt the credibility and legality of the source of his guilt."[165] The court did not address the aforementioned discrepancies in the testimony of the prosecution's witnesses. With respect to Mr. Novruzov, whose testimony raised serious concerns that he was not the "Javanshir Novruzov" who had given a pretrial statement to the police and who even acknowledged in court that he did not witness the incident, the judgment merely states: "Although his name was Novruz, everyone knew him as Javanshir and called him by that name, so when questioned by investigators, he introduced himself as Javanshir. The named person, Novruz Novruzov, testified as a witness during the preliminary investigation and court hearing as a person aware of the circumstances relevant to the case, there is no contradiction between testimonies."[166] With respect to Mr. Ali Agayev, whose account of the incident contained inconsistencies and who ultimately indicated that he had not seen anything, the judgment states: "the witness did not fully remember his testimony due to the fact that a long time had passed since the incident, but the circumstances of the case and his testimony were generally clarified."[167]

The judgment also cites forensic reports that purportedly corroborated Mr. Yagublu's guilt, including a forensic report on Mr. Jabrailov's injuries that described "abrasions" on his shoulder that consisted of "less serious harm to his health" (despite the prosecution's introduction of various investigation reports finding that the screwdriver had pierced through Mr. Jabrailov's clothing, which contained "two puncture wounds" and was bloodied, and that the screwdriver had blood droplets on it), a forensic report on Mr. Jabrailov's injuries dated April 22, 2020 (a month after the incident), and a forensic report that the screwdriver had no fingerprints on it.[168] There is no evaluation of how the screwdriver could have been the subject of a struggle in which neither participant wore gloves yet emerged without fingerprints.

As discussed above, the defense introduced video evidence obtained from a shopkeeper at the bazaar that showed a car matching the description of Mr. Jabrailov's car (as mentioned above, the license plate is unclear) pulling out of a parking space and then moving along the side of the road – the time stamp on the video is 15:25 even though Mrs. Jabrailova called the police at 15:21, after the alleged collision and assault had

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[164] *Id*.
[165] *Id*.
[166] *Id*.
[167] *Id*.
[168] *Id*.

already occurred.[169] The judgment dismisses this video footage, stating that the car in the video did not belong to Mr. Jabrailov because, among other things, the timelines conflicted with the prosecution's account; because "there is no evidence of the surveillance camera, the source and authenticity of the video, the address at which it was filmed, the name of the street and the area covered by the video"; because "the victim himself denies this fact, saying that the car in the video does not belong to him," and because "[d]uring the investigation, it was established that no images were recorded that in the moment of the crime" (Mr. Yagublu had stated that there were normally security cameras in place at the bazaar but the police denied this.)[170]

Additionally, the judgment references Mr. Yagublu's claims that he took photos of the incident on his phone but states that "during the court hearing, no relevant information or images related to the case were identified on the mobile phone."[171] There is no mention of Mr. Yagublu's allegation that his phone had been tampered with. And solely because she is the defendant's "close family member," the judgment bluntly states that the testimony of Mr. Yagublu's wife corroborating his version of the facts "is not taken into account by the court, as it is considered as a statement aimed at achieving the release of the accused from criminal liability."[172] Yet the judgment expresses no concern that the spousal relationship between Mr. and Mrs. Jabrailov affected their credibility. With respect to defense witnesses Mr. Shakir Agayev and Mr. Mahmudzadeh, the judgment does not address their testimony indicating that the police falsified their pretrial statements.

Mr. Yagublu appealed his conviction and went on a hunger strike to protest his imprisonment.[173] On September 18, due to his declining health, he was placed on house arrest while his appeal was pending.[174] He was released on parole in July 2021, with a probationary period of two years and six months.[175] His appeals were ultimately all denied.[176]

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[169] *Id*.
[170] *Id*.
[171] *Id*.
[172] *Id*.
[173] OC Media, *Court in Azerbaijan Places Opposition Leader Tofig Yagublu Under House Arrest*, September 18, 2020, https://oc-media.org/ru/cud-v-azerbaydzhane-perevel-lidera-oppozitsii-tofiga-yagublu-pod-domashniy-arest/.
[174] *Id*.
[175] Amnesty International, *Azerbaijan: Stop Crackdown on Opposition Politicians*, December 15, 2021, https://www.amnesty.org/en/latest/news/2021/12/azerbaijan-stop-crackdown-on-opposition-politicians/.
[176] Application to the European Court of Human Rights, *Yagublu v. Azerbaijan*, App. No. 41020/20, March 17, 2023.

Mr. Yagublu's Recent Arrests

In December 2021, Mr. Yagublu was detained at a peaceful protest in Baku that was geared towards securing the release of an opposition activist.[177] According to media reports, police rounded up around 40 protestors, including Mr. Yagublu, and put them on a bus, releasing most on the outskirts of Baku.[178] Mr. Yagublu recounted that he was taken to a police station and beaten, and that the police demanded he state on camera that he would "stop criticizing Azerbaijan's leadership."[179] He was later found on the roadside, 70 kilometers from Baku, with, according to Human Rights Watch, injuries to his face and head.[180] The Azerbaijan Interior Ministry denied allegations of misconduct.[181] Prosecutors in Azerbaijan refused to investigate Mr. Yagublu's allegations of police abuse and went so far as to suggest that Mr. Yagublu had actually beaten himself while in custody.[182] On December 15, Mr. Yagublu was re-arrested again in a demonstration about the same imprisoned activist, fined, and released.[183]

On December 23, 2022, Mr. Yagublu was arrested a third time for participating in a protest demanding the release of another activist who had been imprisoned.[184] He was convicted of the administrative offenses of petty hooliganism and disobeying the police and sentenced to 30 days in prison.[185] He subsequently went on hunger strike in protest. He remained on hunger strike for the duration of his sentence and was released on January 22, 2023.[186]

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[177] Human Rights Watch, *Azerbaijan: Opposition Leader Beaten in Custody*, 2021, https://www.hrw.org/news/2021/12/03/azerbaijan-opposition-leader-beaten-custody.
[178] *Id*.
[179] *Id*.
[180] *Id*.
[181] *Id*.
[182] Radio Free Europe, *Azerbaijani Opposition Politician 'Beat Himself' in Police Custody, Prosecutor Says*, January 17, 2022, https://www.rferl.org/a/yaqublu-police-beating-self-inflicted/31658233.html.
[183] Amnesty International, *Azerbaijan: Stop Crackdown on Opposition Politicians*, December 15, 2021, https://www.amnesty.org/en/latest/news/2021/12/azerbaijan-stop-crackdown-on-opposition-politicians/.
[184] OC Media, *Imprisoned Opposition Leader Tofig Yagublu on Fifth Day of Hunger Strike*, January 9, 2023, https://oc-media.org/imprisoned-opposition-leader-tofig-yagublu-on-fifth-day-of-hunger-strike/.
[185] *Id*.
[186] Turan AZ, *Tofig Yagublu Released After Expiration of the Term of Arrest*, January 22, 2023, https://www.turan.az/ext/news/2023/1/free/Social/en/657.htm.

METHODOLOGY

A. THE MONITORING PHASE

The Clooney Foundation for Justice sent a monitor to the Baku City Nizami District Court in Azerbaijan to observe the trial; however, the monitor was not able to access the courtroom due to COVID-19-related restrictions. The trial was therefore monitored by obtaining audio recordings of each hearing. The monitor, who is a fluent Azeri speaker, listened to these audio recordings and created a transcript.

B. THE ASSESSMENT PHASE

To evaluate the trial's fairness and arrive at a grade of D, TrialWatch Expert Darryl Brown reviewed the notes prepared by the trial monitor as well as various court documents, including the indictment and judgment, publicly available reports on Azerbaijani officials' actions targeting domestic political dissidents, and analyses of the case and of the political and legal context in Azerbaijan prepared by TrialWatch staff.

Professor Brown found that the proceedings violated rights protected by the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR). Specifically, there were violations of Mr. Yagublu's rights defined in ECHR Article 6 and ICCPR Article 14 to be presumed innocent, to participate in his defense, to call and confront witness, and to be tried by an independent and impartial tribunal. Additionally, Mr. Yagublu's prosecution constituted an abuse of process for ulterior political purposes—to hinder his effectiveness as a political opposition leader and journalist—in violation of ECHR Article 18.

ANALYSIS

A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR);[187] jurisprudence from the United Nations Human Rights Committee (HRC), tasked with monitoring implementation and enforcement of the ICCPR; the European Convention on Human Rights ("ECHR")[188]; and jurisprudence from the European Court on Human Rights ("ECtHR"), tasked with monitoring implementation and enforcement of the ECHR. Azerbaijan acceded to the ICCPR in 1992. Azerbaijan ratified the ECHR in 2002.

B. VIOLATIONS AT TRIAL

Right to the Presumption of Innocence

Article 14(2) of the ICCPR guarantees the right of anyone charged with a criminal offence to the presumption of innocence until proven guilty according to the law. This right is also guaranteed by Article 6(2) of the ECHR.

Public Officials Prejudging Guilt

The United Nations Human Rights Committee has stated that the right "imposes on the prosecution the burden of proving the charges, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle."[189] The Human Rights Committee has further made clear that "it is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused."[190] Likewise, the ECtHR has stated that the presumption of innocence "may be infringed not only by a judge or court but also by other public authorities."[191]

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[187] International Covenant on Civil and Political Rights, December 16, 1966, 999 U.N.T.S. 171 (hereinafter "ICCPR").
[188] Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, Europ.T.S. No. 5; 213 U.N.T.S. 221 (hereinafter "ECHR").
[189] Human Rights Committee, General Comment 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.
[190] *Id*.
[191] European Court of Human Rights, *Allenet de Ribemont v. France*, App. No. 15175/89, August 7, 1996, para. 36.

While Article 6(2) does not prevent authorities from informing the public about ongoing criminal cases, the ECtHR has established that they must do so "with all the discretion and circumspection necessary if the presumption of innocence is to be respected."[192] In this regard, the choice of words used and the context in which they are uttered are important factors in determining whether a statement goes beyond indicating that an individual has been accused of a particular crime to suggest that the individual is guilty.[193] For example, in the case of *Gridin v. Russian Federation*, the Human Rights Committee found a violation of the right to the presumption of innocence where the head of police announced that the defendant was "the murderer" on television before the trial had commenced.[194] Likewise, in *Allenet de Ribemont v. France* the ECtHR found a violation of the presumption of innocence where the authorities referred to the defendant in a press conference "as one of the instigators of a murder and thus an accomplice."[195] As stated by the Court, the statements were "clearly a declaration of the applicant's guilt which, firstly, encouraged the public to believe him guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority."[196]

In the present case, the spokesperson of the Ministry of Internal Affairs, Ehsan Zahidov, made a statement to media outlet Modern.AZ on March 23, 2020.[197] The statement was issued only a day after the accident and pronounced Mr. Yagublu guilty of causing the car accident and attacking Mr. and Mrs. Jabrailov.

According to the Modern.AZ article, Mr. Zahidov stated that "[w]hile the accident happened due to Tofig Yagublu's fault, he argued without good reason, punched Elkhan Jabrailov and his passenger wife Javahir Jabrailova with a fist and a screwdriver, causing them various injuries. Police officers arrived at the scene."[198] The article further noted that Mr. Zahidov had stated that Mr. Yagublu was detained as a suspect under Article 221.3 of the Criminal Code in connection with these facts and that "Tofig Yagublu has been arrested three times before for similar acts."[199]

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[192] *Id*. at para 38.
[193] European Court of Human Rights, *Ismoilov and others v. Russia*, App. No. 2947/06, April 24, 2008, para.166; European Court of Human Rights, *Y.B. v Turkey*, App. Nos. 48173/99 & 48319/99, October 28, 2004, para. 48.
[194] Human Rights Committee, *Gridin v. Russian Federation*, U.N. Doc. CCPR/C/69/D/770/1997, July 8, 2000, paras. 3.5, 8.3.
[195] European Court of Human Rights, *Allenet de Ribemont v. France*, App. No. 15175/89, August 7, 1996, paras. 11, 41.
[196] *Id*. at para 41.
[197] Modern.AZ, *Tofig Yagublu punched the couple with a fist and a screwdriver – Interior Ministry*, March 23, 2020, https://m.modern.az/az/news/232130/tofiq-yaqublu-er-arvadi-yumruq-ve-vintacanla-vurub-daxili-isler-nazirliyi.
[198] *Id*.
[199] *Id*.

These comments unequivocally assert that Mr. Yagublu was at fault for the car accident and subsequently attacked Mr. and Mrs. Jabrailov: the very act for which he was criminally charged and prosecuted. Mr. Zahidov's proclamation that Mr. Yagublu had previously been arrested for similar acts likewise suggested not only that he was guilty but also that he had a propensity to act in such a manner given his history. Similar to *Allenet de Ribemont v. France*, Mr. Zahidov's statements to a public media outlet a day after the incident and while the criminal investigation was ongoing "firstly, encouraged the public to believe [Mr. Yagublu] guilty and, secondly, prejudged the assessment of the facts by the competent judicial authority," in violation of Mr. Yagublu's right to be presumed innocent.

Prosecution's Failure to Meet Burden of Proof

As mentioned above, the presumption of innocence "imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, [and] ensures that the accused has the benefit of doubt."[200] While the Human Rights Committee has noted that "it is generally not for itself, but for the courts of States parties, to review or to evaluate facts and evidence, or to examine the interpretation of domestic legislation by national courts and tribunals," it may choose to comment where "it can be ascertained that the conduct of the trial or the evaluation of facts and evidence or interpretation of legislation was manifestly arbitrary or amounted to a denial of justice."[201]

In case law from the European Court of Human Rights, the right to be presumed innocent is inextricably linked with the principle of *in dubio pro reo*, meaning that any doubts should be resolved in favor of the accused.[202] In this regard, the Court has established that an insufficiently reasoned judgment of conviction can constitute a violation of Article 6(2).[203] The Court has further held that the *in dubio pro reo* principle is violated where a judicial body rejects relevant testimony from a defense witness in issuing a conviction, and fails to provide justification for why the testimony of defense witness(es) lacked probative value.[204]

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[200] Human Rights Committee, General Comment 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.

[201] Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, April 2, 2007, para. 6.7; *see also* Human Rights Committee*, Larranaga v. Phillipines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para. 7.4.

[202] European Court of Human Rights, *Melich and Beck v. Czech Republic*, App. No. 35450/04, July 24, 2008, para. 49.

[203] *Id*. at paras. 49-55; European Court of Human Rights, *Ajdarić v. Croatia*, App. No. 20883/09, December 13, 2011, paras. 46-52.

[204] See European Court of Human Rights, *Melich and Beck v. Czech Republic*, App. No. 35450/04, July 24, 2008, paras. 52-55.

In Mr. Yagublu's case, the court resolved all doubts in the prosecution's favor and dismissed all defense arguments and evidence, in stark violation of the presumption of innocence.

First, the judgment unequivocally accepts the prosecution's version of events without addressing significant gaps and flaws in the prosecution's evidence. It states that it holds no doubts about the credibility of "the testimony of victims and witnesses and other information gathered on the case,"[205] skimming over the many instances where prosecution witnesses' testimony raised more questions than answers and even pointed towards potential misconduct on the part of the authorities. For example, Mr. Novruzov, who gave a statement to the police that he had witnessed Mr. Yagublu assault Mr. Jabrailov, admitted at trial that he could not read or write in the Latin alphabet, despite the fact that his pretrial statement was written in the Latin alphabet; admitted at trial that he did not know the word for screwdriver, 'vintacan,' despite the fact that his pretrial statement asserted that he had seen Mr. Yagublu attack Mr. Jabrailov with a 'vintacan'; and had a different first name, 'Novruz,' from the person named on the prosecution's witness list, 'Javanshir.' The defense therefore alleged that he was actually a different person who had no knowledge of the events at issue. The judgment neglects the glaring contradictions in this witness's testimony, stating only: "Although his name was Novruz, everyone knew him as Javanshir and called him by that name, so when questioned by investigators, he introduced himself as Javanshir. The named person, Novruz Israfil Novruzov, testified as a witness during the preliminary investigation and court hearing as a person aware of the circumstances relevant to the case, there is no contradiction between testimonies."[206]

Amongst prosecution witnesses, Mr. Novruzov's testimony was by no means unique in undercutting the prosecution's case. Police officer Elkhan Jafarov, for example, also did not recognize the word for screwdriver in Azeri, contradicting his pretrial statement in which he used that same word. He further stated that when he arrived at the scene the alleged victims were sitting down, contradicting his pretrial statement that they were standing up. The judgment does not evaluate these inconsistencies.

Meanwhile, other prosecution witnesses who gave pretrial statements asserting that they witnessed Mr. Yagublu assault Mr. Jabrailov ultimately recanted this account in court. Ali Agayev, for example, indicated in his testimony that he had merely heard a collision but did not see anything. The judgment, however skates over this dismantling of the prosecution's case: "Regarding the testimony of witness "Ali Shakir Agayev", the court stated that the witness did not fully remember his testimony due to the fact that a long time had passed since the incident, but the circumstances of the case and his testimony

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[205] Judgment.
[206] *Id*.

were generally clarified."[207] In another indication of its lack of care in assessing the evidence, the court here seems to conflate the prosecution witness Ali Agayev with the defense witness Shakir Agayev.

With respect to Mr. Jabrailov, the court likewise omits mention of discrepancies such as why in his initial statement he said he had been struck by iron whereas in court he stated that the weapon used by Mr. Yagublu was a screwdriver and why he initially testified that he had not seen his wife get struck by the car door but under cross-examination said he had indeed witnessed this incident.

Second, the judgment wholly ignores evidence introduced by the defense. For example, Mrs. Yagublu testified that she witnessed Mrs. Jabrailova "pull the door handle so that Tofig would open it," that at the time "Tofig was in the car […and had] closed all the doors," and that it was in fact she, not Mr. Yagublu, who pushed Mrs. Jabrailova away from the car.[208] However, in its judgment the court flatly disregarded her testimony. "As the accused is [his] close family member – spouse [–] the testimony of witness M. Yagublu is not taken into account by the court, as it is considered as a statement aimed at achieving the release of the accused from criminal liability."[209] Notably, the judgment does not interrogate the spousal relationship between Mr. and Mrs. Jabrailov and how that might have influenced their respective testimony. Further, the judgment does not accord any weight to the fact that Mr. and Mrs. Yagublu's accounts are consistent.

The judgment also dismisses video footage that challenged the prosecution's account of events. The indictment stated that the accident happened at about 3pm and that Mrs. Jabrailova called the police to report the incident at 3:21pm, after Mr. Yagublu had already attacked Mr. Jabrailov. However, the video footage presented by the defense team, the timestamp for which is marked 3:25 pm, shows a white VAZ 2017, the license plate of which is not visible in the video but which is of the same make as that driven by Mr. Jabrailov (this was conceded by the prosecution), parked on the right side of the road near the bazaar; at 3:26 pm the car then begins to move and drives out of the videoframe.[210] According to the defense, this indicated that the accident could only have occurred after 3:25pm and that Mrs. Jabrailova in fact called the police four minutes before the actual collision. However, rather than engaging with and evaluating this evidence evenhandedly, the court relies on a letter from the Nizami Police Department of Baku stating that "[n]o security city cameras or any cameras have been installed in front of the bazaar…where the crime took place"[211] and cites Mr. Jabrailov's testimony denying

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[207] *Id*.
[208] Monitor's Notes, September 1, 2020.
[209] Judgment.
[210] *Id*. TrialWatch reviewed this video.
[211] *Id*.

that the car in the footage was his.[212] In a circular fashion, the judgment concludes that because the video evidence contradicts the timeline put forth by the police and prosecution, "the court considers the arguments of the defense that the car recorded in the video belongs to the victim Elkhan Jabrailov to be unfounded."[213]

With respect to the testimony of defense witnesses Shakir Agayev and Mirmohammad Mahmudzadeh, who stated that the police had falsified statements that they witnessed the collision, the judgment states that the two were "circumstantial" witnesses but does not discuss the allegations of police misconduct.

Third, the court does not address any of the defense's broader arguments. In court, for example, the defense had repeatedly questioned why there was no security camera footage of the incident; why Mr. Jabrailov had only mild documented injuries even though investigation reports found that his shirt had been pierced with holes by the screwdriver and that both his clothing and the screwdriver were bloodied; and why forensic experts did not find fingerprints on the screwdriver even though it was allegedly the subject of a heated struggle between Mr. Yagublu and Mr. Jabrailov. None of these issues are even mentioned in the court's evaluation of the evidence and arguments.

In sum, the judgment turns the presumption of innocence on its head, affording the prosecution the entire benefit of the doubt and resolving all uncertainties and contradictions in the prosecution's favor.

Right to Effective Participation and Right to a Defense

Article 14 of the ICCPR and Article 6 of the ECHR guarantee minimum rights to persons accused of a criminal offense, including the right to effective participation,[214] and right to defend oneself. As the European Court of Human Rights has held, "Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial, which includes, inter alia, not only his or her right to be present, but also to hear and follow the proceedings."[215] Article 6 further provides for the inter-related right to defend oneself in person or through legal counsel.[216] The right to defense entails the defendant's ability to communicate confidentially with defense counsel in real time throughout the proceedings.

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[212] *Id*.

[213] *Id*.

[214] The understanding that Article 14 encompasses the right to effective participation is reflected in various subcomponents of Article 14: the right to interpretation in court, which aims to ensure that the accused is able to follow the proceedings; the right to be tried in one's presence, which implies the ability to hear and follow the proceedings; the right to defend oneself in person, which of necessity assumes the ability to hear and follow the proceedings; and the right to communicate with counsel, which likewise assumes that the accused is able to hear and follow the proceedings and confer with counsel accordingly.

[215] European Court of Human Rights, *Murtazaliyeva v. Russia*, App. No. 36658/05, December 18, 2018, para. 91.

[216] See ECHR, Article 6(3)(c).

The European Court has stated that "an accused's right to communicate with his lawyer without the risk of being overheard by a third party is one of the basic requirements of a fair trial in a democratic society; otherwise legal assistance would lose much of its usefulness."[217] The UN Human Rights Committee has likewise stated that under Article 14 counsel must "be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."[218]

In *Yaroslav Belousov*, the European Court considered a case in which the Russian authorities confined the applicant and his co-defendants in a small glass cabin throughout their trial.[219] The European Court noted that the glass enclosure "reduced . . . direct involvement in the hearing," "made it impossible for the applicant to have confidential exchanges with his legal counsel" out of earshot of the guards, and prevented the defendant from taking notes or receiving documents, undermining his rights to participate effectively in the proceedings and to receive practical and effective legal assistance.[220]

Given that the trial court took no steps to mitigate these limitations, the European Court found that keeping the defendant in the glass cabin constituted a violation of his fair trial rights, including the right to effective participation in the proceedings and the right to defend oneself through counsel.[221]

As in *Yaroslav Belousov*, the trial court confined Mr. Yagublu in an enclosed glass cabin on the side of the courtroom throughout the length of the trial. Due to the barrier, Mr. Yagublu struggled to hear the proceedings. As discussed above, when Mr. Yagublu and his lawyers asked for Mr. Yagublu to be removed from the glass cabin due these hearing problems; the court refused the request. Additionally, because Mr. Yagublu was sequestered across the room from his lawyers, he had no opportunity to privately confer with counsel during the proceedings.

In light of the above, Mr. Yagublu's right to effective participation and to defend himself through counsel was violated.

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[217] European Court of Human Rights, *Yaroslav Belousov v. Russia*, App. Nos. 2653/13 & 60980/14, October 4, 2016, para. 149; *see also* European Court of Human Rights, *Sakhnovskiy v. Russia*, App. No. 21272/03, November 2, 2010, para. 97.

[218] Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 34.

[219] See European Court of Human Rights, *Yaroslav Belousov v. Russia*, App. Nos. 2653/13 & 60980/14, October 4, 2016, para. 74.

[220] *Id.* at paras. 151–153.

[221] *Id*. at paras. 152–153 (finding a violation of Articles 6(1) and 6(3)(b) and 6(3)(c) of the Convention).

Right to Call and Examine Witnesses

The right to call and examine witnesses is a fundamental component of a fair trial and is explicitly guaranteed by the ICCPR and ECHR.[222] This right extends both to the defense's ability to call its own witnesses and its right to effectively cross-examine the prosecution's witnesses. The principle of equality of arms embodied in both treaties requires that the defense be able to confront incriminating evidence and present its evidence on the same terms as the prosecution.[223]

Although the right to call defense witnesses is not absolute, the UN Human Rights Committee has stated that the defense is entitled to call witnesses who are relevant,[224] if proposed in a timely manner in compliance with procedural requirements.[225] The European Court has likewise ruled that the defense is entitled to call witnesses where the request is not "vexatious," where the request is "sufficiently reasoned [and] relevant to the subject-matter of the accusation," and where the witnesses' testimony could have strengthened the defense's case.[226] With respect to cross-examination, the European Court has made clear that "the accused should be given an adequate and proper opportunity to challenge and question a witness against him."[227]

Restrictions on defense questions can thus violate the right to call and examine witnesses. The Human Rights Committee has found that a court's excessive interference with the defense's cross-examination of a key prosecution witnesses, combined with a refusal to call several defense witnesses, represented a violation of this right.[228]

In *Pichugin v. Russia*, the European Court ruled that a defendant's fair trial rights were violated where the presiding judge repeatedly struck defense questions aimed at interrogating a key prosecution witness's credibility and reliability, and allowed the witness to refuse to answer a question by the defense pertaining to the circumstances of the

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[222] *See* ICCPR, Article 14(3)(e); ECHR, Article 6(3)(d).
[223] *See* European Court of Human Rights, *Rowe and Davis v. the United Kingdom*, App. No. 28901/95, February 16, 2000, para. 60.
[224] Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.6.
[225] Human Rights Committee, *Johnson v. Spain*, U.N. Doc. CCPR/C/86/D/1102/2002, March 27, 2006, para. 6.5; Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39.
[226] *See* European Court of Human Rights, *Polyakov v. Russia*, App. No. 77018/01, para. 34, January 29, 2009.
[227] *See* European Court of Human Rights, *Pichugin v. Russia*, App. No. 38623/03, October 23, 2012, para. 195.
[228] *See* Human Rights Committee, *Larrañaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para. 7.7.

case.[229] The European Court found that by giving the witness "gratuitous permission" to refuse to answer relevant questions and by failing to warn him of his statutory duty to answer questions, the presiding judge had undermined the defendant's right to examine witnesses.[230] Furthermore, the Court found that the judge's removal of defense questions that bore on the witness's credibility, including those pertaining to his criminal record, his reasons for not giving incriminatory statements about the defendant until his second interview on the matter, and possible pressure exerted on him by the prosecuting authorities, prevented a reasoned evaluation of how much weight to attach to the witness's statements.[231] According to the Court, the defense should have been permitted to "test [the witness's] reliability and credibility."[232] As a result of the judge allowing the witness to refuse to answer key questions and restricting the testing of his credibility, the Court found a violation of the defendant's right to a fair trial and right to call and examine witnesses.[233]

Intervention in Defense Cross-Examination

In the present case, Mr. Yagublu faced circumstances analogous to those in *Pichugin*, which violated his right to call and examine witnesses. For example, when the defense team questioned Mr. Jabrailov about inconsistencies in his testimony, such as why he had asserted under cross-examination that he saw Mr. Yagublu hit Mrs. Jabrailova with the car door when he said he had not seen this during questioning by the prosecutor, the judge intervened, asking the defense lawyer to move onto the next question without justification.[234] However, when the defense team did so and started questioning Mr. Jabrailov about why the damage to his clothing from the alleged attack did not match the mild injuries found on his body, the judge again intervened and did not allow the witness to answer the question, instead striking the question entirely.[235] The judge interrupted anew to hinder the defense team's question to the witness about the position of the cars at the time of the collision.[236] Finally, when the defense lawyer asked the court "so I cannot ask a question?", the judge accused him of "causing chaos."[237]

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[229] *See* European Court of Human Rights, *Pichugin v. Russia*, App. No. 38623/03, October 23, 2012, paras. 53–56, 172, 210–212.
[230] *Id*. at paras. 204–205 ("The Court finds peculiar the reaction of the presiding judge to such an unmotivated refusal by a witness to reply to questions. Being the ultimate guardian of the fairness of the proceedings, she was required under domestic law to take all necessary measures to ensure observance of the principles of adversarial proceedings and equality of arms." *Id*. at para. 204).
[231] *Id*. at para. 210.
[232] *Id*.
[233] *Id*. at paras. 212–213.
[234] Monitor's Notes, August 7, 2020.
[235] *Id*.
[236] *Id*.
[237] *Id*.

Likewise, when the defense team cross-examined police officer Elkhan Jafarov about why in his written statements he said the Jabrailovs were standing up when he arrived at the scene but in his oral testimony he said they were sitting down, the judge interrupted the questions, asking: "[w]hat does it matter?"[238] The defense lawyer clarified that "[t]his suggests that the witness is not telling the truth. He does not even know the word 'screwdriver' in Azerbaijani." The court shut down further inquiry, stating: "[t]he witness says what he remembers."[239]

And the judge intervened again when prosecution witness Ali Agayev was cross-examined by the defense team and provided oral testimony that contradicted his written statement. For example, in his written statement Mr. Agayev said that he witnessed the collision of the cars and the attack by Mr. Yagublu with the screwdriver. But on cross-examination he testified that he did not see the collision, only heard the sound of it, and that he did not see a screwdriver. After the judge read the witness's prior statement aloud in court, the defense team questioned Mr. Agayev about the screwdriver and whether or not he saw who punched whom, only to be told by the judge to "ask another question."[240] The defense lawyer asked "why can the prosecutor ask questions and we can't?"[241] The judge replied: "[h]e has already answered your questions. There is no need to ask the same questions."[242] When the defense made clear that its goal was to highlight the contradictions in testimony, going so far as to file a written petition to the court objecting to the judge being "a party to the prosecution," the court dismissed the petition without consideration.[243]

By disallowing defense questions – effectively aiding witnesses in evading questions that could harm the prosecution's case – the court violated the defendants' right to call and examine witnesses. In stark contrast, the prosecution was permitted to freely ask almost any question of defense witnesses without the court's intervention.

Denial of Defense Requests to Call Witnesses

The court refused Mr. Yagublu's request to call certain witnesses who were willing to corroborate Mr. Yaglublu's account, such as Mrs. Yagublu's nephew Isa Ismayilov – as discussed above, Mr. Ismayilov accompanied Mrs. Yagublu to the market and could have testified to seeing Mr. Yagublu locked in his car while Mr. and Mrs. Jabrailov yelled at him and attempted to get him out of the car. The court refused this request without providing any explanation. Given that the Mr. Ismayilov was an eyewitness to the events at the heart of the case, there was no reason to prevent the defense from obtaining his

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[238] Monitor's Notes, August 19, 2020.
[239] *Id*.
[240] Monitor's Notes, August 28, 2020.
[241] *Id*.
[242] *Id*.
[243] *Id*.

testimony, particularly when contrasted with the number of witnesses the court allowed the prosecution to call in support of its case.

The court likewise refused the defense request to call investigator Ramil Aliyev for questioning; the defense stated that Mr. Aliyev could provide insight on violations that Mr. Yagublu alleged occurred in the pretrial stage of the case, such as denial of his access to counsel during his interrogation, the deletion of exculpatory evidence from his and his wife's phones, and the falsification of witness statements. The court denied this request without explanation. Again, this stood in stark contrast to the number of police officers the prosecution was allowed to call to make its own case.

The court's denial of defense requests to call relevant witnesses thus constituted an additional violation of Mr. Yagublu's right to call and examine witnesses.

Right to an Impartial, Independent, and Competent Tribunal

Article 14(1) of the ICCPR provides that "[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him ... everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." The UN Human Rights Committee has explicitly stated that the competence, independence, and impartiality requirements represent "an absolute right that is not subject to any exception."[244]

The guarantee of judicial impartiality encompasses both a subjective dimension, meaning that judges must be free from preconceptions, prejudice, or personal bias that might influence their judgments, and also must refrain from taking actions that would unfairly advantage one party to the proceedings over another;[245] and an objective dimension, requiring that even in the absence of actual bias, a tribunal must appear to be impartial to a reasonable observer.[246] In *Ashurov v. Tajikistan*, the Human Rights Committee found an Article 14(1) violation where a judge – as recounted by the complainant – "asked leading questions to prosecution witnesses, corrected and completed their answers and instructed the court's secretary to record only those testimonies establishing [the accused's] guilt."[247] The Committee has likewise found violations of the guarantee of impartiality under Article 14(1) of the ICCPR where trial courts have disregarded key

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[244] Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 19.

[245] *Id*. at para. 21. *See also* Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, paras. 2.8, 6.6; Human Rights Committee, *Karttunen v. Finland*, U.N. Doc. CCPR/C/46/D/387/1989, November 5, 1992, para. 7.2.

[246] Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 21.

[247] Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, paras. 2.8, 6.6.

defense contentions and motions.[248] To note, the Committee generally does not explicitly distinguish between subjective and objective bias in finding violations of Article 14(1).

Article 6(1) of the ECHR entitles defendants "to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law." In interpreting this right, the European Court of Human Rights has emphasized that democratic societies demand courts which "inspire confidence in the public and above all, as far as criminal proceedings are concerned, in the accused."[249]

Like the UN Human Rights Committee, the European Court assesses a tribunal's impartiality along both subjective and objective lines. Under the subjective standard, a judge cannot hold any personal bias or prejudice in adjudicating a case.[250] The Court assumes no bias upon the part of an individual judge until there are indications otherwise, such as displays of "hostility" or "ill will" from the judge.[251] The case of *Ramishvili and Kokhreidze v. Georgia* (although it involved pretrial detention proceedings and thereby implicated Article 5(4), not Article 6(1)) provides an instructive example of how subjective bias can manifest itself in the courtroom.

The proceedings under review in *Ramishvili and Kokhreidze v. Georgia* were described as follows: when the defense posed questions "which perplexed the prosecutor, the judge either directly replied instead ... or rephrased the questions in a leading manner, thereby suggesting a suitable answer for the prosecutor."[252] In such circumstances, the Court concluded that "the judge was obviously aiding the prosecutor during the hearing, by either directly responding to the questions of the defense instead of the latter or rephrasing these questions in a manner more advantageous to the prosecutor."[253] The Court consequently found that the judge's conduct "could not be said ... to be devoid of bias."[254]

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[248] Human Rights Committee, *Khostikoev v. Tajikistan*, U.N. Doc. CCPR/C/97/D/1519/2006, December 3, 2009, paras. 7.2-7.3. *See also* Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, para. 6.5; Human Rights Committee, *Saidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/964/2001, July 8, 2004, para. 6.7; Human Rights Committee, *Toshev v. Tajikistan*, U.N. Doc. CCPR/C/101/D/1499/2006, April 28, 2011, para. 6.6.

[249] European Court of Human Rights*, Kyprianou v. Cyprus*, App. No. 73797/01, December 15, 2005, para. 118.

[250] European Court of Human Rights, *Nicholas v. Cyprus*, App. No. 63246/10, January 9, 2018, para. 49.

[251] European Court of Human Rights, *Kyprianou v. Cyprus*, App. No. 73797/01, December 15, 2005, paras. 118-119; European Court of Human Rights, *Hauschild v Denmark*, App. No. 10486/83, May 24, 1989, para. 47.

[252] European Court of Human Rights, *Ramishvili and Kokhreidze v. Georgia*, App. No. 1704/06, January 27, 2009, paras. 61, 134, 136.

[253] *Id*. at para. 134.

[254] *Id*.

With respect to the objective assessment, the Court seeks to verify the existence of facts that could lead a reasonable observer to question the tribunal's impartiality.[297] As stated by the Court in *Nicholas v. Cyprus*:

> It must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his or her impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge or a body sitting as a bench lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified.[255]

The objective test primarily concerns "hierarchical or other links between the judge and other protagonists in the proceedings or the exercise of different functions within the judicial process by the same person."[256]

In Mr. Yagublu's case, the judge consistently displayed hostility towards defense counsel and defense evidence and arguments, indicating that he was subjectively biased against the defense.

First, as discussed above, the judge denied defense requests to call relevant witnesses, such as Mrs. Yagublu's nephew, who witnessed the events at issue, and the investigator who helped lead the investigation and might have possessed knowledge about pretrial violations alleged by Mr. Yagublu. The judge did not provide any explanations in denying these requests. In contrast, the judge did not refuse any prosecution requests for witnesses.

Second, as detailed above, the judge interrupted and struck questions during the defense's cross-examination of prosecution witnesses. These questions were aimed at highlighting inconsistencies in the prosecution's case and the judge's interjections hindered the defense from eliciting testimony damaging to the prosecution. The judge did not strike prosecution questions.

Third, the judge denied defense petitions seeking material evidence that could have assisted the defense and undercut the prosecution's case. For example, as mentioned above, the judge rejected the defense request to obtain the phone data of police officer Malik Manafov to determine where he was at the time of accident. The defense argued that contrary to his testimony Mr. Manafov had watched the incident unfold from the beginning (Mr. Yagublu claimed that he saw Mr. Manafov at the scene before the Jabrailovs arrived), and thus this was relevant to the question of whether Mr. Yagublu

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[255] European Court of Human Rights, *Nicholas v. Cyprus*, App. No. 63246/10, January 9, 2018, para. 52.
[256] *Id*. at para. 53.

was framed. Likewise, the court also denied the defense request to obtain the Jabrailovs' phone records to establish who they called and when, data that was highly relevant to the defense's contention that the case had been fabricated. In rejecting the petition regarding the Jabrailovs' phones, the judge provided no explanation. In rejecting the petition regarding Mr. Manafov's phone, the court stated that it could not coerce witnesses into providing their phone numbers – despite the fact that it is routine for parties to obtain and introduce mobile phone records into evidence in criminal cases.

The judge also denied the defense's request for a forensic examination of the phones of Mr. and Mrs. Yagublu to assess whether they had been tampered with and to determine whether any data could be recovered (the defense alleged that both Mr. and Mrs. Yagublu took photos and video at the time of the incident that corroborated their accounts but that were deleted when the police confiscated their phones). The judge provided no explanation in refusing this request, indeed initially granting it and then suddenly at the end of trial ruling that the forensic examination could not take place.

Fourth and as described above, in convicting Mr. Yagublu the judge unequivocally accepted the prosecution's case, ignoring all evidence and arguments introduced by the defense and giving less weight to manifest inconsistencies in the prosecution's own evidence, whether that be testimony that suggested the police had falsified statements, the numerous inconsistencies between written statements provided to the police before trial and prosecution witnesses' testimony on the stand, the video footage submitted by the defense, and the inconsistencies between the forensic medical examination finding that Mr. Jabrailov had mild injuries and police reports that his clothing was perforated and bloodied and that there was blood on the screwdriver.

The instances of conduct described above evinced the judge's hostility towards the defense and corresponding subjective bias, thus violating Mr. Yagublu's right to an independent and impartial tribunal.

C. OTHER FAIRNESS CONCERNS

Ulterior Motive—Abusive Prosecution

The ICCPR and European Convention prohibit the abuse of judicial proceedings to intimidate, discriminate against, or punish individuals for the exercise of their rights. The UN Human Rights Committee, for example, has determined that detention on the basis of human rights and journalistic work violates the right to liberty protected by ICCPR Article 9(1).[257] And Article 18 of the ECHR states that "the restrictions permitted under

[257] Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, May 28, 2018, para. 7.7.

this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

While the Human Rights Committee has yet to establish clear criteria for assessing violations arising from the abuse of judicial proceedings, jurisprudence from the ECtHR is instructive in evaluating whether a legal proceeding has been driven by improper motives.[258] Among the factors considered are: the political context in which the prosecution was brought,[259] such as a pattern of arrests and prosecutions;[260] whether the prosecution had reasonable suspicion to bring the charges;[261] how the criminal proceedings were conducted;[262] and whether the ultimate decision was well-reasoned and based on law.[263]

The ECtHR has also made clear that if a legal proceeding has both proper and improper motives, the Court will nevertheless find an abuse-of-process violation where improper motives "predominated."[264] Further, acknowledging that it is very often difficult to adduce direct evidence of a State's bad faith, the ECtHR has held that proof of an illegitimate purpose may be shown by circumstantial evidence.[265] Put simply, abuse of process may be demonstrated where there is a "coexistence of sufficiently strong, clear and concordant inferences" suggesting that an unlawful purpose "predominated" the proceedings.[266]

The ECtHR's ruling in *Navalnyy v. Russia* provides useful guidance on abuse of process in the context of suppressing political dissident such as Mr. Yagublu. In finding that the repeated arrest and detention of Navalny was a violation of Article 18 of the European Convention—specifically, that the proceedings were aimed at preventing Navalny from

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[258] European Court of Human Rights, *Guide on Article 18 of the European Convention of Human Rights, Limitations on Use of Restrictions and Rights*, August 31, 2022, para. 57, https://www.echr.coe.int/Documents/Guide_Art_18_ENG.pdf.

[259] European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, November 28, 2017, paras. 320-322.

[260] European Court of Human Rights, *Mammadov v. Azerbaijan*, App. No. 15172/13, May 29, 2019, paras. 187-189.

[261] European Court of Human Rights, *Khodorkovskiy v. Russia*, App. No. 5829/04, May 31, 2011, para. 258; European Court of Human Rights, *Khodorkovskiy and Lebedev v. Russia*, App. Nos. 11082/06 and 13772/05, July 25, 2013, para. 908.

[262] European Court of Human Rights, *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, para. 171.

[263] European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 107.

[264] European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, November 28, 2017, para. 305.

[265] *Id.* at paras. 316-317; European Court of Human Rights, *Ibrahimov and Mammadov v. Azerbaijan*, App. No. 63571/16, February 13, 2020, para. 147.

[266] European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, November 28, 2017, para. 314; European Court of Human Rights, *Aliyev v. Azerbaijan*, App. Nos. 68762/14 and 71200/14, September 20, 2018, para. 200.

participating in the domestic political process[267]— the ECtHR cited indicia such as patterns of harassment of the political opposition, the lack of justification for some of the arrests, and the flawed conduct of the proceedings against Navalny.[268]

Based on the ECtHR's criteria, Mr. Yagublu's case appears to constitute an abuse of process. The most important factors supporting this finding are 1) the political context in which the prosecution took place; 2) the multiple criminal cases brought against Mr. Yagublu over his years as a journalist and opposition leader, which reflect a pattern of harassment; 3) the specific timing of the criminal case against Mr. Yagublu, coming just days after the President's speech sharply condemning opposition groups; 4) hostile statements by public officials after Mr. Yagublu's arrest; 5) the flawed conduct of the case by the presiding court; and 6) serious inconsistencies and gaps in the prosecution's evidence.

First, as described above, the authorities have used the justice system against members of political opposition groups and critics of the government, including journalists and human rights defenders. In a 2018 case, for example, the European Court of Human Rights took note of "a "troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law."[269] Freedom House's 2022 country report on Azerbaijan likewise cited "the many trumped-up or otherwise flawed cases brought against opposition figures, activists, and critical journalists," [270] while RSF has reported that independent journalists are "thrown into prison under absurd pretexts."[271] Mr. Yagublu is a member of the opposition, a former journalist, and a human rights activist: his prosecution thus aligns with documented patterns of harassment of dissenting voices.

Second, Mr. Yagublu has repeatedly been subject to the weaponization of the justice system in connection with his activism, indicating that he is a government target. In 1998, Mr. Yagublu was convicted of participating in an unauthorized mass protest and given a two-year suspended sentence.[272] In 2013, while he was working for the independent *Yeni*

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[267] European Court of Human Rights, *Navalnyy v. Russia*, App. No. 29580/12, November 15, 2018, paras. 174-176.

[268] *Id*. at paras. 167-176 (noting another indicia of abuse is targeting of the defendant amongst similarly situated individuals).

[269] European Court of Human Rights*, Aliyev v. Azerbaijan*, App. Nos. 68762/14 and 71200/14, September 20, 2018, para. 223.

[270] *See* Freedom House, *Freedom in the World 2022: Azerbaijan, Developments in 2021*, 2022, https://freedomhouse.org/country/azerbaijan/freedom-world/2022; Human Rights Watch, *Harassed, Imprisoned, Exiled*, October 20, 2016, https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbaijans-continuing-crackdown-government-critics.

[271] Reporters Without Borders, *Azerbaijan*, 2023, https://rsf.org/en/country/azerbaijan.

[272] Balcani Caucaso, *Azerbaijan: the Yagublu Affair*, September 14, 2020, https://www.balcanicaucaso.org/eng/Areas/Azerbaijan/Azerbaijan-the-Yagublu-affair-204838.

Musavat newspaper, he was convicted and sentenced to five years in prison on charges of organizing mass disorder and endangering public officials.[273] With respect to this case, the Court specifically held that Mr. Yagublu's arrest and detention had violated Article 5 of the European Convention (the right to liberty and security) because the government failed to prove that there was "reasonable suspicion" that he committed a criminal offence."[274] After spending two years in prison, Mr. Yagublu was released in March 2016 via a presidential pardon.[275] And Mr. Yagublu has also been subject to multiple administrative cases in proceedings marked by irregularities, including two instances of arrest and detention that the European Court found unlawful and in bad faith.[276]

Third, the hooliganism case against Mr. Yagublu coincided with a larger crackdown on government critics. Specifically, on March 19, 2020, President Aliyev marked the Novruz holiday with a speech in which he said:

> Unfortunately, we are receiving information about facts related to irresponsibility. At the same time, we see open provocations. Where do these provocations come from? From the very fifth column, from the enemies who are among us, the elements calling themselves opposition, the traitors who receive money from abroad. Their main goal is to destroy Azerbaijan. The worse for Azerbaijan, the better for them. Look at their addresses on social networks, they are full of hatred and provocation. They seem to want riots to happen. They want turmoil. They want panic. And then they claim that they care about the Azerbaijani people. They are our enemies, and we must openly state this. It is not known what this disease will lead to. Therefore, during the existence of the disease, the rules of completely new relationships will apply. Let everyone know this. It is possible that a state of emergency may be declared at some point. In this case, the isolation of representatives of the fifth column will become a historical necessity. The Azerbaijani people have long thrown them into the dustbin of history, and they have been there for almost 30 years now. But we cannot allow the anti-Azerbaijani forces, the fifth column and national

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[273] Amnesty International, *Guilty of Defending Rights: Azerbaijan's Human Rights Defenders and Activists Behind Bars*, March 4, 2015, https://www.amnesty.org/download/Documents/EUR5510772015ENGLISH.pdf.

[274] European Court of Human Rights, *Yagublu v. Azerbaijan*, App. No. 31709/13, November 5, 2015, para. 62.

[275] Freedom House, *Freedom in the World 2017: Azerbaijan, Developments in 2016*, 2017, https://freedomhouse.org/country/azerbaijan/freedom-world/2017.

[276] *See* European Court of Human Rights, *Yagublu v. Azerbaijan,* App. No. 69686/12, July 15, 2021, paras. 56-60.

> traitors to take advantage of this situation to commit various provocations.[277]

Right after the speech, Mr. Yagublu gave interviews and made various social media posts criticizing it.[278] Notably, the President's speech was broadcast on March 19, 2020, and the accident that was the basis of the charges against Mr. Yagublu occurred mere days later on March 22, 2020. According to reports, in the three weeks after the speech was made several other opposition figures and government critics were also arrested on various charges.[279]

Fourth, as discussed above hostile statements made by public officials accompanied the Yagublu case, with the spokesperson for the Minister for Internal Affairs stating only a day after the incident, before investigations had been completed, that "[w]hile the accident happened due to Tofig Yagublu's fault, he argued without good reason, punched Elkhan Jabrailov and his passenger wife Javahir Jabrailova with a fist and a screwdriver, causing them various injuries. Police officers arrived at the scene."[280] That a government official pronounced Mr. Yagublu guilty of attacking Mr. Jabrailov so soon after the incident and prior to the case's adjudication is a further indication that there was a political valence to the proceedings.

Fifth, as documented throughout this report, the judge presiding over the case conducted the proceedings in a manner suggesting that he was biased against defense. This was demonstrated through his repeated interference with defense questioning of prosecution witnesses, his refusal of defense requests to call relevant witnesses, his refusal of defense requests to obtain relevant evidence, and his convicting judgment, which dismisses all defense arguments and evidence and resolves all uncertainties and contradictions in the prosecution's favor. Such apparent lack of impartiality in a case brought against a government critic further reflects widespread reports of the Azerbaijani

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[277] Message of Congratulation of President Ilham Aliyev to the people of Azerbaijan, March 19, 2020, https://en.president.az/articles/36212.

[278] Application to the European Court of Human Rights, *Yagublu v. Azerbaijan*, App. No. 41020/20, March 17, 2023.

[279] See Human Rights Watch, Azerbaijan: Crackdown on Critics Amid Pandemic, April 16, 2020, https://www.hrw.org/news/2020/04/16/azerbaijan-crackdown-critics-amid-pandemic ("In recent weeks, the authorities have sentenced at least six activists and a pro-opposition journalist to detention for between 10 and 30 days on spurious charges including breaking lockdown rules or disobeying police orders.")

[280] Modern.AZ, *Tofig Yagublu punched the couple with a fist and a screwdriver – Interior Ministry*, March 23, 2020, https://m.modern.az/az/news/232130/tofiq-yaqublu-er-arvadi-yumruq-ve-vintacanla-vurub-daxili-isler-nazirliyi.

judiciary's lack of independence in political trials, with judges and prosecutors purportedly taking orders from the government and outcomes predetermined.[281]

Sixth, as described throughout this report, the prosecution's evidence was riddled with massive inconsistencies, such as to undercut its case entirely, and the defense put forth substantial arguments and evidence in support of Mr. Yagublu's account of being attacked by the Jabrailovs.

In light of the above, there are grounds to conclude that the proceedings against Mr. Yagublu meet the standards for an abuse of process.

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[281] *See* U.S. Department of State, *2022 Country Reports on Human Rights Practices: Azerbaijan*, 2023, https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/azerbaijan/. *See also* Freedom House, *Freedom in the World 2022: Azerbaijan, Developments in 2021*, 2022, https://freedomhouse.org/country/azerbaijan/freedom-world/2022.

CONCLUSION AND GRADE

The proceedings against Tofig Yagublu violated international human rights standards, particularly those specified in ECHR Articles 6 and 18. This prosecution contributed to a larger pattern of the Azerbaijani government targeting independent journalists and political opposition figures with arrests and administrative or criminal charges. The trial record, in the context of the public record of government actions and statements outside the court, indicates that Mr. Yagublu's prosecution was motivated by his anti-government political activism, and that this ulterior government motive explains the violations of Mr. Yagublu's fair trial rights in this case.

GRADE: **D**

ANNEX

GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant's reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.