European Human Rights Advocacy Centre
School of Law
Middlesex University
The Burroughs
London NW4 4BT
United Kingdom
Email: ehrac@mdx.ac.uk
Phone: +44 208 411 2826
Fax: +44 (0)203 004 1767

DGI - Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECHR
F-67075 Strasbourg Cedex
FRANCE

E-mail: dgI_execution_just_satisfaction@coe.int
dgI-execution@coe.int

Sent by email

1 September 2017

Dear Sir/Madam,

Re: *Rasul Jafarov v. Azerbaijan*, Appl .No. 69981/14 – submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments

We are writing to make further submissions pursuant to Rule 9(1) of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments as to the individual measures required in the case Rasul Jafarov v Azerbaijan and to inform you about the latest developments concerning the payment of just satisfaction to the applicant. This is further to our earlier submissions of 26 October 2016 and 18 January 2017 on the individual measures necessary for the full and effective implementation of the judgment in this case.

These submissions deal with two issues: a) the re-opening of the domestic proceedings, and b) the payment of just satisfaction.

a) Re-opening of the domestic proceedings

We attach an expert legal opinion on the impact of a finding of a violation of Articles 5 and 18 of the European Convention on Human Rights at the domestic level, which was commissioned by the European Human Rights Advocacy Centre (EHRAC) from Julian B. Knowles QC at Matrix Chambers. Mr Knowles was asked to advise on the impact of the finding by the European Court of Human Rights of a violation of Article 18 relating to the applicant`s pre-trial detention on the legitimacy of the criminal proceedings that led to his conviction (Annex 1). The Opinion concludes that the Court`s findings under Articles 5 and 18, in the particular circumstances of Mr Jafarov`s case, should lead to the reopening of the proceedings by the domestic courts, in order to achieve full *restitutio in integrum*.

The Opinion refers to Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, which suggests that the re-opening of proceedings has proved to be the most efficient, if not the only, means of achieving *restitutio in integrum*, including in cases where `the violation found is based on procedural errors or shortcomings of such gravity that a serious doubt is cast on the outcome of the domestic proceedings complained of` (para II(ii)(b)).

Although the Opinion recognises that not every finding of a violation of Article 5 together with Article 18 will necessarily justify the reopening of the proceedings (for example, where evidence subsequently emerges which justifies the bringing of criminal charges), Mr Knowles concludes that the findings of the Court in Mr Jafarov's case make it clear that the whole criminal case against him was politically motivated, and accordingly that Mr Jafarov`s conviction was based on procedural errors or shortcomings `of such gravity that a serious doubt is cast on the legitimacy of his conviction` (para 16).

We recall that the domestic law allows for the possibility of reopening as the Criminal Code provides for a procedure for the re-examination of criminal cases on the basis of 'newly discovered circumstances' (Articles 461-467). In the applicant's case, we submit that the Court's judgment should be considered as a newly discovered circumstance forming the basis for the re-examination of the criminal case against the applicant (see the applicant`s previous submissions of 26 October 2016 and 18 January 2017). In his earlier submissions the applicant informed the Department that on 26

August 2016 the Supreme Court rejected his request for the re-opening of his case as being inadmissible. A further decision was made by the Supreme Court on 27 January 2017, and again his request for reopening was rejected (Annex 2).

We recall that in previous cases in which the Court has found violations of both Articles 5 and 18 in the course of criminal proceedings, the question of the re-opening of the domestic proceedings, or other alternative means of ensuring the rehabilitation of the applicants, was central to the supervision process pursued by the Committee of Ministers (see the applicant`s previous submissions of 26 October 2016 and 18 January 2017). For example, in the case of *Lutsenko v Ukraine*, Appl. No. 6492/11 (violations of Articles 5 and 18), the applicant's criminal conviction was quashed by the domestic court, as a result of the ECtHR judgment.

It is emphasised that Mr Jafarov's conviction continues to severely limit his ability to exercise his rights and his professional activities, despite his early release. It is recalled that the applicant's conviction continues in effect for a period of six years after the date of his conviction, in accordance with Article 83.3.4 of the Criminal Code. Therefore, as a result of the conviction, the applicant is prevented from standing for any elections in Azerbaijan until 2021; nor can he be admitted to the Azerbaijani Bar Association until 2021. Furthermore, If he were convicted of any other criminal offence during the 6-year period, he would be punished more severely for committing an offence during the early release period, as provided in Article 83.1 of the Criminal Code.

In conclusion, in the light of Mr Knowles' Opinion, it is submitted that the Committee of Ministers should (i) state that the terms of the judgment of the European Court of Human Rights in Mr Jafarov's case require the reopening of the domestic criminal proceedings against him, and the Committee should (ii) call on the Azerbaijani authorities to ensure that the proceedings are in fact reopened, and retried in a manner that is wholly compliant with the European Convention on Human Rights.

b) Partial delayed payment of just satisfaction

In its judgment in Mr Jafarov's case, the Court ordered the Azerbaijani Government to pay him damages of €25,000 and costs and expenses of €7,448 by the deadline of 4 October 2016. However, to date, the Government has only paid the applicant a total of €8,500 in a series of instalments: €2,000 in April 2017; €2,000 in May 2017; €1,500 in June 2017; €1,500 in July 2017; and €1,500 in August 2017 (Annex 3). Therefore, the Government is still required to pay the remaining sums due,

together with simple interest on all sums paid late or still outstanding, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points, as indicated in the Court's judgment.

We remain at the Department`s disposal should any additional information be required.

Yours faithfully,

Philip Leach
Khalid Baghirov
Joanne Sawyer
Ramute Remezaite

Legal Representatives of the applicant

Annexes
Annex 1. Opinion of Julian B. Knowles QC, Matrix Chambers, dated 17 August 2017
Annex 2. Judgment of the Supreme Court of Azerbaijan dated 27 January 2017 (with covering letter dated 10 February 2017) (in Azerbaijani, with English translation)
Annex 3. Letter to Mr Jafarov from the Ministry of Finance dated 4 July 2017 (in Azerbaijani, with English translation)