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## The mercy of Commodus – The failure of Jagland



This Emperor is cruel but merciful

Dear friends,

This week, during a well-attended ceremony in Oslo, the **2014 Andrei Sakharov Freedom Award** was given to "political prisoners in Azerbaijan."

Recent months have been an extraordinary time for Azerbaijan's brave dissidents. While they are receiving global recognition, they remain in jail. Remarkably, most of them were arrested or sentenced *whilst their country was holding the chairmanship, between May and November 2014, of what used to be the one of the most prestigious human rights institutions in the world: the Council of Europe*. And so far the Council of Europe has barely reacted to the imprisonment of Azerbaijan's leading human rights activists.



**"No business as usual"**

Please watch – and share – this 2 minute clip on Azerbaijan and the Council of Europe

An Azerbaijani won the 2014 **Vaclav Havel Human Rights Prize**. Another Azerbaijani is nominated for the **Martin Ennals Award** for Human Rights Defenders. Leyla Yunus was one of three finalists for the **European Parliament's Sakharov Prize for Freedom of Thought**. She also won Poland's 2014 **Sergio Vieira de Mello Prize** and is nominated for the Nobel Peace Prize. More prizes might yet be awarded to Azerbaijanis. All of these accolades are remarkable for a country of only nine million people.

### **Theatre of the Absurd**

Recent events make the Council of Europe in Strasbourg a stage for the political theatre of the absurd. The script is written in Baku. Everyone plays the roles assigned to them.

Take the story of **Anar Mammadli**. In spring 2012 Anar was an advisor to the rapporteur of the Parliamentary Assembly of the Council of Europe (PACE) on the issue of political prisoners. He led an independent NGO specialised in monitoring elections. **Like the OSCE's election monitoring body ODIHR**, he concluded that there had been irregularities and manipulations during the October 2013 presidential elections in Azerbaijan. He was arrested a few weeks later and sentenced to more than five years in prison in May 2014, just as Azerbaijan assumed the chairmanship of the Council of Europe.

An **independent commission on behalf of PACE** awarded him the **Vaclav Havel Prize in September 2014**. For the government in Baku Anar Mammadli remains an ordinary criminal. Until today neither the Committee of Ministers of the Council of Europe (which represents 47 member states) nor the secretary general of the Council of Europe – former Norwegian prime-minister Torbjorn Jagland – have called for his unconditional release.

Instead, in a **recent article in the Guardian**, Mr. Jagland describes Azerbaijan as a "young democracy" which "needs help." He notes that "we are closely following several other trials against human rights defenders in Azerbaijan." Mr. Jagland did not call for these trials, travesties of justice, to stop.

Jagland wrote that "current legislation stifles" the activities of civil society. In fact, during this summer, the bank accounts of dozens of independent NGOs were frozen. Criminal procedures have been launched against the most respected local and international NGOs, from the Legal Education Society to the Institute for Reporter's Safety, from IREX to the National Democratic Institute. Many staff are in hiding, in exile or in jail. Some NGOs have seen their offices sealed. Nils Muiznieks, the Council of Europe's Human Rights Commissioner, wrote recently about "**the arrest and detention over the last summer of virtually all the civil society partners of my Office.**" But nothing has followed from this.

In his article Jagland explained that he "tasked the Council of Europe's group of international constitutional experts – the Venice Commission – with scrutinising Azerbaijan's NGO-related laws... and member states cannot afford to ignore their advice." In fact, over the past decade *every* recommendation made by the Venice Commission to Azerbaijan has been ignored.

Praising the first meeting of a new Working Group on Human Rights Issues, Jagland also highlighted "an agreement [he] reached with Aliyev last August," and the working group's composition "of human rights defenders, parliamentarians, officials of the presidential administration and a Council of Europe expert." This group, handpicked by the Azerbaijani authorities, included mostly so-called activists distinguished by vicious public campaigns against some of the current political prisoners.

But this is not the worst.

### **Cruel mercy**

Take the story of four less well-known political prisoners: activists Shahin Novruzlu, Bakhtiyar Guliyev, Elsever Murseliyev and Hasan Huseynli.

Shahin, Bakhtiyar, Elsever and Hasan were sentenced on drug possession or hooliganism charges to between five and seven years in prison. They were included **in a list of almost 100 political prisoners put together during the summer** by human rights defenders Leyla Yunus and Rasul Jafarov (who were arrested immediately thereafter).

Then, on 17 October, president Aliyev decided that it was time to be merciful, and pardoned Shahin, Bakhtiyar, Elsever and Hasan. The international response was remarkable. Jagland wrote in the *Guardian*:

"...there are glimmers of hope. Three weeks ago, Azerbaijan's President Ilham Aliyev pardoned some 80 prisoners, among them four human rights defenders"

The European Union's **Catherine Ashton and Stefan Fule issued a special press** release to "greet this amnesty as a positive first step in reversing the trend of recent months." They added:

"The relationship between the EU and Azerbaijan is important to us. It has considerable potential to benefit both sides."

The **US State Department** also issued a statement:

"The United States welcomes the October 17 pardon and release of four civil society activists in Azerbaijan, including Hasan Huseynli. Prior to his conviction in July on questionable hooliganism charges, Huseynli and his NGO worked with the U.S. Embassy in Baku on student exchanges and educational advising."



Shahin Novruzlu, the youngest political prisoner

Not one of these statements took a closer look at the president's act of mercy.

Take the story of the youngest of these four, Shahin. Arrested at age 17 in March 2013 as a member of the youth group Nida on alleged drug charges, he was tortured during his detention, losing his four front teeth, [according to Amnesty International](#). Shahin was sentenced to six years. His father, who always believed in his innocence, died while he was in jail. Mercy? Yes, Shahin was pardoned, after 19 months behind bars, for crimes he and his colleagues never committed. But in order to secure his release he had to write a letter to President Aliyev:

"Over the past year I have had many opportunities to look again at the youth way of life passed by me. I believe that to be convicted was the biggest mistake of my life... I want to note that until now I have never been a member of any political organization and will not continue as a member of any political organization."

Such letters were written by every other pardoned activist. Excerpts make clear what is going on. Hasan praised President Ilham Aliyev's [belligerent speech at the Council of Europe summer session](#) and denounced international organizations and western politicians who had advocated for his release. His apology letter reads:

"Azerbaijan is a legal state and I believe in its protection by the Azerbaijani President. I don't need my rights to be protected by any foreign politicians."

The released youth activist Bakhtiyar wrote:

"The reason for my appeal is in the fact that during the arrest, I found myself. And I realized that I was implementing erroneous ideas of provocative forces. I demand that the appropriate institutions should stop calling me a political prisoner."

Elsever wrote:

"I reject the NIDA Civic Movement and opposition Azerbaijani Popular Front Party membership. I demand that the opposition newspaper Azadlig removes my photo from list of "prisoners of conscience... Without deeply understanding the great policy conducted by Mr. Ilham Aliyev, I had wrongly joined the organization, which called itself opposition... I support the policies of president Ilham Aliyev, and I leave the political world".

For somebody sentenced on drug charges these are curious things to write.



A released prisoner before the statue of the father of the Azerbaijani president

Along with the renunciation of all opposition activity, there is another established ritual for many political prisoners to undergo to be released in Azerbaijan. Most activists have to pay public respect to the president's family, bowing in front of the grave of Ilham Aliyev's father, Heydar Aliyev. Pictures and videos are then shown on television. Two of the four released most recently – and their families – had to do this as well.

Is anybody fooled by these expressions of loyalty made under duress? In fact, this is not the point. The goal of the authorities is to create fear – and to discredit activists, showing that in the end, everyone at least pretends to love big brother.

As this is working, the current system creates perverse incentives: it makes sense for the state to arrest an increasing number of people. It makes sense to sentence them to longer prison terms. To then treat them – and their families – as badly as possible to increase pressure. And when the prisoners finally give up under duress, to force them to perform an act of public humiliation. Note that only some letters lead to freedom. **Rasul Jafarov** also wrote a letter. He did not accuse anyone abroad. He did not admit any errors. He simply wrote:

"I'm charged with committing a crime concerning the projects I implemented within my human rights activities... Understanding that only you can help me to be released, I decided to appeal to you for pardon. I have always intended to work for a better and more prosperous homeland..."

A pro-government parliamentarian, Chingiz Ganizade, explained the rules of Aliyev's game:

"There seems to be a hidden intention behind Jafarov's appeal. He still claims that his arrest is politically-motivated. I don't think his letter is sincere. He does not admit his guilt."

Rasul was not released.

Typically mercy and revenge are antithetical, but not in Azerbaijan today. Instead we are in the world of the film *Gladiator*, where Emperor Commodus asked himself: "Should I be merciful?" at the very moment when he contemplates his revenge. There is nothing dishonourable in writing letters with fake apologies under duress. But for the Council of Europe, the EU and the US to present this cruel mercy as a source of hope is obscene.

And only a few days after the most recent amnesty the detention of **Leyla Yunus**, her husband Arif, **Intigam Aliyev** and **Rasul Jafarov** was extended by many more months.



October 2014 – The President of Azerbaijan hosts the President of the European Court of Human Rights in Baku

## Why Aliyev loves the Strasbourg Court



Ilham Aliyev and Thorbjorn Jagland in Strasbourg in June

Earlier this summer, right after NIDA activists and Anar Mammadli had been sentenced, Secretary General (SG) Thorbjorn Jagland and Ilham Aliyev met. It was 24 June. 8:45 in the morning. A summary of this internal meeting describes what happened:

"SG remarked that there has been a good start to Azerbaijan's Chairmanship of the Committee of Ministers, adding that there is now an Action Plan which is an important step forward.

President Aliyev stated that this Chairmanship presents challenges, but [is] also very important for his country, commenting that the Action Plan is a good roadmap which will create new opportunities.

SG agreed that the Council of Europe can see the success of Azerbaijan's multiculturalism policy, however he emphasised that this is overshadowed by the situation of political prisoners in the country; an issue which had already been discussed with the President during the SG's visit to Baku in May.

The President expressed his disagreement with this view, and stated that this issue would be addressed during the current Chairmanship. Azerbaijan would like a universal definition of 'political prisoner' to be established. He commented that, for example in Georgia, there have been people who have been perceived to be political prisoners, but that nobody called them so.

SG said that the definition of 'political prisoner' should not be left exclusively to PACE, but that the final word should be given to the European Court of Human Rights. He said that of course the judgment with respect to Ilgar Mammadov is not yet final, but asked the President that his country does not send the case to the Grand Chamber and that it be brought to an end.

The President supported SG's view that only the Court should decide on the definition and the "status" of political prisoners, however he remarked that yesterday PACE had made an effort to appoint a new rapporteur on political prisoners by manoeuvre, as the Azerbaijan delegation was not present in the chamber at the time. He asked that this issue be stopped in the PACE to allow Azerbaijan to deal with the Court's decision.

SG said that when visiting Baku, he was informed by NGOs that there was a Joint Committee involving the Presidential Administration and NGOs discussing individual cases of political prisoners. This stopped three years ago. SG stated that this should be restored and that the Council of Europe would be ready to delegate a respected high-ranking member of the Secretariat to be part of that committee's work.

President Aliyev confirmed that he would be in favour of the SG's proposal."

This is a remarkable conversation. By this time, Ilgar Mammadov had by been in prison since February 2013. He had been working with the Council of Europe secretariat for many years before that. It was clear from the very outset, that Ilgar's arrest was politically motivated. While in jail, he had been put under enormous pressure. In May 2014, the European Court of Human Rights confirmed that Ilgar Mammadov's arrest was purely political.

Against this backdrop, which was well known in June 2014 Jagland did *not* call on Azerbaijan to release Ilgar Mammadov. Not in public and not in private. He called on President Aliyev instead to help speed up the procedures in the court. Which, of course, Aliyev neither promised nor did.

Jagland went further and distanced himself from the definition of political prisoner officially adapted by the **Parliamentary Assembly of the Council of Europe in 2012**. By noting that "the final word should be given to the Court" he accepted the position of the regime in Baku: that anyone arrested and jailed in Azerbaijan can always turn to the European Court; only if the court accepts the case and proceeds with a final and binding ruling, a release might follow. Or not: today Ilgar is still in prison.



For a devastating illustration how Ilham Aliyev uses the Council of Europe to justify arrests look at this two-minute clip

Let us return to the recent *Guardian* article by Jagland. Jagland wrote:

"Earlier this month, the European court of human rights, which is part of the Council of Europe, confirmed an earlier decision ruling that Azerbaijan's arrest and detention of Ilgar Mammadov, a well-known opposition politician and commentator, violated the European convention on human rights. The judgment was as critical as it was clear: the court concluded that "the actual purpose of his detention had been to silence or punish Mammadov for criticising the government and publishing information it was trying to hide.

A request from the authorities to have the case transferred to the grand chamber of the court was rejected. The 47 member states of the Council of Europe are bound by the convention to implement the court's decisions, and I have urged the authorities in Azerbaijan to release Mammadov without delay."

In finally calling for the release of Ilgar Mammadov in October 2014, Jagland stressed that the earlier decision by the court has now been confirmed and is thus final. It is this emphasis that also explains his official silence regarding cases where no final judgement has been reached. And why Jagland does not call for the immediate release of either Leyla Yunus, or Rasul Jafarov, or Anar Mammad.

In 2012 **Azerbaijan and its allies strongly backed an amendment in a debate** on PACE that read:

"The Parliamentary Assembly confirms that the interpretation and application of any criteria defining a political prisoner are the exclusive competence of the European Court of Human Rights, which is the only authority to assess violations of fundamental rights and freedoms, as stipulated in the European Convention for Human Rights and its Protocols."

The policy behind this amendment – which was not adopted – has now been resurrected by the Secretary General. The European Court in Strasbourg has thereby become a fig-leaf for the regime, to continue to suppress its critics. PACE, the Court and the secretariat ... all performing their roles in Baku's theatre of the absurd.

### Back to Oslo



Sakharov award ceremony in Oslo  
Belarus Dissident Ales Bialiatiski – relatives of **Leyla Yunus**, **Rasul Javarov**  
and **Intiqam Aliyev**

Back to Oslo. During the Sakharov award ceremony this week, Ragnhild Astrup Tschud, the chair of the board of the Norwegian Helsinki Committee, described the Azerbaijani chairmanship of the Council of Europe as a "disgrace." She added:

"We want to be especially proud of the Council of Europe with a Norwegian secretary general. But sadly we are not."

In a few weeks the eyes of the world will turn to Oslo again, when Jagland, who also happens to be the head of Norwegian Nobel Peace Prize committee, will award this year's Nobel Peace Prize.

Perhaps Mr Jagland will use the next weeks to stand up to the Azerbaijani government's abuse of power and thus give his compatriots reason to be proud again of his role at the Council of Europe. There is so much he could do, but has not done: to appoint a commission of independent human rights judges to study the pattern of political arrests and report back. To call on the regime to release Leyla Yunus, Anar Mammadli and others immediately. To dismiss obviously dishonest initiatives – such as the joint working group with Azerbaijan on human rights issues – which are only meant to buy time. And to recommend to the Committee of Ministers to make an urgent visit to Baku and to meet the people in jail who have now received the Norwegian Sakharov award.

The time to act is now. Business as usual is not an option any longer.

Sincere regards,



Gerald Knaus

### Further reading:

- [Oslo – The dream of a Europe without political prisoners and the grim reality of Azerbaijan](#) (12 November 2014)
- [Washington DC – Broader Implications of the Human Rights Crackdown in Azerbaijan](#) (27 October 2014)
- [ESI Azerbaijan country section](#)
- [Standing up for European values](#)
- [Media reactions: The Council of Europe and political prisoners](#)
- [THE LIST – 98 political prisoners in Azerbaijan – August 2014](#). Cases studied by the Working Group led by Leyla Yunus and Rasul Jafarov
- [Thomas de Waal: The Responsibility of a Politician: Leyla Yunus and the Heirs of Andrei Sakharov](#) (October 2014)
- [Budapest – ESI talk at CEU: The Rhetoric of Reaction - Pessimism, Complacency and Newspeak in 2014](#) (18 September 2014)
- [ESI report: Caviar Diplomacy. How Azerbaijan silenced the Council of Europe](#) (2012)