



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MURADVERDIYEV v. AZERBAIJAN

(Application no. 16966/06)

JUDGMENT

STRASBOURG

9 December 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Muradverdiyev v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Christos Rozakis, *President*,

Nina Vajić,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 November 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 16966/06) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Azerbaijani national, Mr Akif Shamsaddin oglu Muradverdiyev (*Akif Şəmsəddin oğlu Muradverdiyev* – “the applicant”), on 27 April 2006.

2. The applicant was represented by Mr F. Ağayev, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that his right to liberty under Article 5 of the Convention had been breached, because there had been no relevant or sufficient reasons to justify his continued detention. He also alleged that his right to the presumption of innocence under Article 6 § 2 of the Convention had not been respected by the domestic authorities.

4. On 3 July 2007 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Baku.

6. The applicant worked as the Head of the Administrative Department of the Office of the President of the Republic of Azerbaijan before the events described below.

7. During a telephone conversation of 20 October 2005, he and the Minister of National Security agreed to meet the following day to discuss the case of the attempted but failed *coup d'état*, allegedly planned by a number of incumbent and former high-ranking officials to be carried out immediately after the parliamentary elections of 6 November 2005. Several persons had already been arrested in connection with this case.

A. The circumstances of the applicant's arrest

1. The applicant's version of the events

8. On the morning of 21 October 2005 the applicant arrived at the building of the Ministry of National Security ("the MNS") where he met with the Minister for about thirty minutes. After this meeting, he met with several other MNS officers in their offices.

9. From 5.20 p.m. to 7.15 p.m. on the same day the applicant was questioned as a witness. At around 10 p.m. he met with the Deputy Minister of National Security. That night, he wrote a statement (of unspecified content) addressed to the Minister of National Security.

10. The next day, on 22 October 2005, the applicant was questioned again. At 10.55 p.m. on 22 October 2005 the investigator ordered the applicant's detention as a suspect (*tutma protokolu*) for a period of forty-eight hours. The investigator stated that the applicant was suspected of having known about, but having failed to inform the authorities, contrary to Article 307.1 of the Criminal Code, of the attempted *coup d'état* allegedly organised by former Speaker Rasul Guliyev, former Minister of Finance Fikret Yusifov, Minister of Economic Development Farhad Aliyev, Minister of Healthcare Ali Insanov, and others. The investigator also gave the possibility of the applicant's absconding as a reason for his detention.

2. The Government's version of the events

11. The applicant was invited to the MNS as a witness within the framework of criminal case no. 76586 and he arrived at the MNS building on 21 October 2005 at 5.10 p.m. On the same day he was questioned as a witness from 5.20 p.m. to 7.15 p.m. and he left the MNS building at 7.25 p.m.

12. On 22 October 2005 the applicant was again invited to the MNS, where he arrived at 1.00 p.m. On the same day, he was questioned as a witness from 1.10 p.m. to 3.15 p.m. and from 4.20 p.m. to 5.50 p.m. According to the Government, the applicant left the MNS building during

the break between the above-mentioned questionings and he did the same at 6.00 p.m. after the second questioning. On the same day, the applicant returned to the MNS building at 9.55 p.m. and at 10.55 p.m. the investigator in charge of the case ordered that the applicant be detained as a suspect for a period of forty-eight hours.

B. The application of the preventive measure of remand in custody in respect of the applicant

13. On 24 October 2005, by a decision of the investigator of the Prosecutor General's Office issued in the presence of the applicant and his lawyer, the applicant was formally charged in criminal case no. 76586 with the criminal offences of attempted organisation of mass disorder and attempted usurpation of State power by force, as provided by Articles 28, 220.1 and 278 of the Criminal Code.

14. At approximately 5.30 p.m. on 24 October 2005 a judge of the Nasimi District Court, relying on the official charges brought against the applicant and the prosecutor's request to apply the preventive measure of remand in custody (*həbs qətimkan tədbiri*), ordered the applicant's detention for a period of three months. The judge substantiated the necessity of this measure as follows:

“Taking into account the nature and gravity of the offence committed by Akif Muradverdiyev, as well as the possibility of his absconding from the investigation and the court, I consider it necessary to apply the preventive measure of remand in custody in respect of him.”

The hearing concerning the application of the preventive measure of remand in custody was held in the MNS building.

15. On 26 October 2005 the applicant appealed against the decision of the Nasimi District Court of 24 October 2005, complaining that the judge had not independently assessed any evidence in order to establish whether there had been reasonable suspicion that he had committed a criminal offence. He also argued that the judge had failed to provide any reasons justifying his remand in custody and had not taken into consideration his personality, family status and other personal circumstances when he had ordered his detention.

16. On 28 October 2005 the Court of Appeal upheld the Nasimi District Court's decision of 24 October 2005. The court maintained the applicant's detention reiterating the first-instance court's findings concerning the gravity of the charges and the possibility of the applicant's absconding.

C. Joint statement by law-enforcement authorities concerning the criminal proceedings against the applicant

17. On 26 October 2005 the official newspaper *Azərbaycan* and other mass media published a joint statement dated 25 October 2005 headlined as “From the Prosecutor General's Office, the Ministry of National Security and the Ministry of Internal Affairs of the Republic of Azerbaijan”. This joint statement officially informed the public of the arrest and indictment of a number of well-known current and former state officials, including the applicant, and provided a summary of the evidence gathered in respect of their involvement in numerous alleged grave crimes. The evidence mainly consisted of statements of the arrested persons concerning secret meetings between them and their sources of financing, as well as large amounts of cash and other valuables found in the homes of some of them.

18. The joint statement of 25 October 2005 stated, *inter alia*:

“It has been established that Akif Muradverdiyev, former Head of the Administrative Department of the Office of the President of the Republic of Azerbaijan, and Fikret Sadygov, former President of the State Company Azerkimya, conspired with Rasul Guliyev, who is accused of large-scale embezzlement of public funds and for which he is currently being investigated, as well as with former Minister of Healthcare Ali İnsanov, former Minister of Economic Development Farhad Aliyev, former Minister of Finance Fikret Yusifov and other persons interested in the forcible capture of power. During their secret meetings held at the restaurant Flagman situated near the Novkhany-Sumgayit highway, at different apartments in the capital and its suburbs, and in dachas, they agreed on the unlawful usurpation of State power, the organisation of sabotage groups recruited for planned mass disorder and the financial support for these activities.

...

During the investigation, on 22 October 2005, Akif Muradverdiyev wrote to the Prosecutor General indicating his willingness to voluntarily provide information that he knew about the planned crime against the State power ...

...

The persons accused in the criminal case and those questioned as suspected persons or witnesses have confirmed in their statements that Akif Muradverdiyev was a direct participant in anti-constitutional activities and that ... 32,700 United States dollars, 14,000 euros, and 9,100 pounds sterling, as well as other foreign currency, 209 gold coins, 40 gold watches and other pieces of jewellery have been seized from Akif Muradverdiyev's dacha situated in Novkhany during a search conducted within the framework of the investigation. ...”

D. Subsequent extensions of the applicant's detention

19. At the request of the prosecutor in charge of the criminal case, on 14 January 2006 the Nasimi District Court, in the absence of the applicant

and his lawyers, extended the length of the applicant's remand in custody by a period of four months, until 22 May 2006. The judge substantiated the necessity of the extension of the applicant's detention as follows:

“As there are sufficient grounds on the possibility of the applicant's absconding from the authority conducting the criminal proceedings, illegally influencing persons participating in the proceedings, as well as hiding or falsification of the necessary evidence for prosecution, it is necessary to extend his remand in custody for a period of four months”

20. The applicant appealed against this decision claiming that there was no justification for the extension of the detention period. He further alleged that neither he nor his lawyers had been informed of the place or date of the hearing at which the extension of his detention period had been decided.

21. On 10 February 2006 the Court of Appeal upheld the decision of the Nasimi District Court of 14 January 2006. As to the justification for the extension of the applicant's detention, the appellate court stated as follows:

“The court considers that the conclusion of the court [of the first-instance] is lawful and justified.

In fact, the investigator R. Huseynov pointed out in his explanation that, R. Guliyev, the person with whom conspired the accused person A. Muradverdiyev lives abroad and if he (A. Muradverdiyev) was released he can go abroad absconding the investigation with the help of R. Guliyev. Moreover, the accused person A. Muradverdiyev had occupied for years important positions and if he was released he has the possibility to influence persons participating in the proceedings and obstruct the investigation.”

The court also found that, although the applicant's lawyers had been informed of the hearing in the Nasimi District Court and despite the postponement of this hearing by one day at their request, they had failed to attend the hearing.

22. On 16 May 2006 the investigator in charge of the criminal case asked the Prosecutor General for an extension to the deadline for the pre-trial investigation, noting that the investigation had discovered new evidence concerning the applicant's possible involvement in other crimes, such as embezzlement of public funds and abuse of official power, and that more time was needed to complete the investigation. On the same day the Prosecutor General submitted a request asking the court to extend the applicant's detention by a period of five months, until 22 October 2006.

23. On 16 May 2006 the Nasimi District Court extended the applicant's remand in custody until 22 October 2006. The court held that more time was needed for a comprehensive and objective investigation of the case, noting that the investigation had recently discovered new evidence that might implicate the applicant's involvement in other crimes such as embezzlement of public funds and abuse of official power. As to the justification for the extension of the applicant's detention, held as follows:

“As there are sufficient grounds on the possibility of the applicant's absconding from the authority conducting the criminal proceedings, illegally influencing persons participating in the proceedings, as well as obstructing the investigation by hiding or falsification of the necessary evidence for prosecution, a request was lodged with the court for extension of his remand in custody for a period of five months in connection with exceptionally complexity of the case.

...

While examining the materials of the case and the request, it was established that the request on extension of the remand in custody in respect of the accused person, A. Muradverdiyev, is justified and must be granted.”

24. The applicant appealed, complaining of a lack of justification for extension of his detention. On 31 May 2006 the Court of Appeal dismissed the appeal noting that the decision of the Nasimi District Court of 16 May 2006 was lawful. The justification for the extension of his detention was brief and as follows:

“The court, after having discussed the arguments of the appeal claim and having heard the lawyer's submission in favour of the appeal and the prosecutor's speech against the appeal, considers that, as the Nasimi District Court's decision is lawful and justified, the appeal should be dismissed.”

25. In the meantime, on 1 June 2006 the applicant was taken to the Medical Treatment Facility of the Ministry of Justice owing to his deteriorated health condition. After a medical examination, he was prescribed certain medication. His lawyers were informed that he was suffering from a number of ailments, such as diffuse atherosclerosis of the cerebral arteries, circulatory encephalopathy, hypotonia, chronic pancreatitis, a duodenal ulcer, and a pancreatic tumour.

26. On 5 August 2006 the applicant's lawyers lodged a request with the Nasimi District Court for the applicant to be placed under house arrest in lieu of being remanded in custody. On 9 August 2006 the Nasimi District Court refused the applicant's request noting that there was no need to change the preventive measure of remand in custody. Following the applicant's appeal, on 16 August 2006 the Court of Appeal upheld the first-instance court's decision.

E. New criminal charges and the trial

27. On 13 September 2006, by a decision given by an investigator of the Prosecutor General's Office, the applicant was charged with new criminal offences within the framework of a new criminal case no. 76844 which was separated from criminal case no. 76586. The applicant was accused of having committed the criminal offences of embezzlement of public funds, abuse of official power, bribery, and forgery of official documents, as provided for by Articles 179.3.2, 308.2, 311.3.1, 311.3.2, 311.3.3 and 313

of the Criminal Code. On 25 September 2006 the Prosecutor General transferred the bill of indictment to the Assize Court.

28. On 6 October 2006 the Assize Court held a preliminary hearing. In that hearing, the Assize Court decided, *inter alia*, that the preventive measure of remand in custody in respect of the applicant should remain unchanged.

29. On 31 October 2006 the Assize Court delivered its judgment, finding the applicant guilty of criminal offences under Articles 179.3.2, 308.2, 311.3.1, 311.3.2, 311.3.3 and 313 of the Criminal Code and sentencing him to six years' imprisonment, confiscation of his property and a two-year ban from public office.

30. On 5 March 2007 the Court of Appeal upheld the Assize Court's judgment of 31 October 2006. On 15 January 2008 the Supreme Court partly quashed the Court of Appeal's judgment and changed the applicant's sentence to a suspended sentence of five years' imprisonment. The applicant was released from prison.

31. As to the current state of the investigation concerning criminal case no. 76586, which still carried the charges against the applicant under Articles 28, 220.1 and 278 of the Criminal Code, it appears that it was not sent for trial, but was not terminated either.

F. Further developments concerning the withdrawal of the application

32. By a letter of 2 November 2007, signed by the applicant and sent to the Court by the Prison Service of the Ministry of Justice, the applicant expressed his wish to withdraw his application.

33. By a letter of 21 December 2007, the applicant's lawyer informed the Court that the applicant had written the letter of 2 November 2007 in the absence of his lawyer and on the recommendations of Government officials.

34. Following the Court's letter of 18 January 2008 asking for clarification whether the applicant had indeed intended to withdraw the application, the applicant's lawyer informed the Court by a letter of 27 February 2008 of the applicant's wish to continue pursuing his application, noting that the letter of 2 November 2007 had been written when the applicant was in poor health.

II. RELEVANT DOMESTIC LAW

A. Detention on remand

35. Chapter XVII of the Code of Criminal Procedure ("the CCrP") deals with preventive measure. Article 154 of the CCrP provides for ten types of

preventive measures imposed pending trial, including remand in custody (*həbs qətimkan tədbiri*). Any preventive measure, including remand in custody, can be applied taking into account the existence of a risk that the accused may: (a) hide from the prosecuting authority; (b) interfere with the pre-trial investigation or trial by illegally influencing the parties to the proceedings or by tampering with or hiding the relevant evidence; (c) re-offend or pose a danger to the public; (d) fail to appear before the prosecuting authority without good reason or otherwise evade criminal responsibility and punishment; or (e) hinder the execution of a court judgment (Article 155.1). The following should also be taken into account when deciding upon the need for a preventive measure and choosing the type of measure to be applied: (a) the nature and gravity of the criminal charge and circumstances in which the investigated offence was committed; (b) the accused's personality, age, health, occupation, and his or her family, financial and social situation; and (c) whether the accused has been convicted or subjected to preventive measures before, and other relevant circumstances (Article 155.2). Moreover, as a general rule, the preventive measure of remand in custody can be imposed only with regard to a person who is charged with an offence which carries a punishment of more than two years' imprisonment (Article 155.3).

36. The CCrP distinguishes between two types of detention on remand: (1) detention “pending investigation”, that is, while the relevant prosecuting authority conducts pre-trial investigation; and (2) subsequent detention while the case is being tried in court. There is no apparent practical difference between these types of detention except the calculation of the time-limits.

37. In respect of persons accused of especially serious criminal offences, the maximum length of detention pending investigation (*məhkəməyədək icraat zamanı qətimkan tədbiri qismində həbsdə saxlama müddəti*) cannot exceed eighteen months from the moment of the arrest, including all possible extensions of the initial three-month period (Articles 158.1, 159.1, 159.2, 159.7 and 159.8). The calculation of this total period of detention pending investigation takes into account any periods of actual detention, house arrest or stay in a medical facility. The running of detention pending investigation is stopped on the day the case is sent to the trial court or the day when the preventive measure of remand in custody is lifted (Article 158.3).

38. The period during which the accused and his lawyers are given access to the case file (*cinayət işinin materialları ilə tanış olma müddəti*) is not taken into account upon calculation of the period of detention pending investigation (Article 158.4).

39. Upon completion of the pre-trial investigation, the investigator notifies the accused person and other relevant parties about it and determines the time and place for giving them access to the case file

(Article 284.1). Articles 284-288 of the CCrP set out detailed rules and procedures for the consultation of the case file by the relevant parties, including the accused person. After the consultation of the case file is completed as required by Articles 284-288, the investigator issues the bill of indictment (Article 289). The bill of indictment is then forwarded to the prosecutor supervising the pre-trial investigation, who has five days to, *inter alia*, approve it or return it to the investigator for re-drafting (Article 290).

40. Following the approval of the bill of indictment by the supervising prosecutor, the case is sent to the trial court (Article 292). If the accused person is being detained, the day the case is sent to the trial court marks the end of his or her detention pending investigation (Article 158.3) and the beginning of detention during the trial.

41. Pursuant to a legislative amendment of 14 June 2005 (repealing former Article 158.5), the CCrP no longer provides for any time-limits for detention during the trial.

B. Proceedings concerning the application and review of detention on remand

1. Detention “pending investigation”

42. The preventive measure of remand in custody may be applied and extended only by means of a court order requested by the prosecutor supervising the pre-trial investigation (Articles 156.2 and 441.1.2).

43. Various procedural matters relating to pre-trial investigation, including the application of detention on remand, are examined in camera by a single judge of the relevant district court within twenty-four hours of receiving the relevant request (Articles 447.1 and 447.2). The following persons have a right to attend the hearing: (a) the person who has lodged the request concerning the particular procedural matter; (b) the prosecutor supervising the pre-trial investigation; and (c) the person whose rights are affected by the request or his or her representative (Article 447.3).

44. Both a court order applying or refusing to apply the preventive measure of detention on remand and a court order extending or refusing to extend the detention period may be appealed against. The appeal court's decision on this matter is final (Articles 157.6 and 159.6).

45. The appeal must be lodged within three days of the delivery of the relevant court order (Article 452.1). Within three days of receipt of the appeal, it is examined in camera by a panel of three judges of the appeal court (Articles 453.1 and 453.2). The following persons have a right to attend the hearing: (a) the person lodging the appeal; (b) the prosecutor supervising the pre-trial investigation; and (c) the lawyer or representative of the accused person (Article 453.3).

2. *Detention during the trial*

46. The trial court must hold a preliminary hearing within fifteen days (or thirty days in complex cases) of receipt of the case file (Article 298.2). At this preliminary hearing, among other things, the court must determine whether the defendant should remain in custody or be released pending trial and issue a relevant order (Articles 299.3.5, 300.2, 301.2 and 306).

47. At any time during the trial and upon its own initiative, the court may order, vary or revoke any preventive measure, including detention on remand (Articles 156.2 and 320). Any such decision must be given in the deliberations room and signed by all the judges on the panel (Article 321.2.2).

48. During the trial, judicial decisions concerning preventive measures cannot be appealed against to a higher court (Article 173.2).

C. Appeals against the prosecuting authorities' actions and decisions

49. Chapter LII of the CCrP lays down the procedure by which parties to criminal proceedings could challenge the actions or decisions of the prosecuting authorities before a court. Article 449 provides that the accused (or suspected) person or his counsel can challenge actions or decisions of the prosecuting authorities concerning, *inter alia*, his or her arrest or detention. The judge examining the legality of the prosecuting authorities' actions and decisions can quash them if found to be unlawful (Article 451).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

50. The applicant complained that his arrest and detention had not been based on reasonable grounds for suspecting that he had committed a criminal offence. He also complained that the deprivation of his liberty had not been lawful. In particular, he noted that he had been arrested in an unlawful manner and detained in excess of the maximum forty-eight hour period permitted by domestic law prior to being brought before a judge. He further alleged that, after the period of his pre-trial detention authorised by the Nasimi District Court's decision of 16 May 2006 had come to an end on 22 October 2006, he had been unlawfully detained until 31 October 2006. The relevant part of Article 5 § 1 of the Convention reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so ...”

A. Reasonable suspicion

51. The Government submitted that the applicant had been arrested on a reasonable suspicion that he had committed a criminal offence. In particular, the suspicion was based on the statements given in the criminal case, as well as other evidence.

52. The applicant alleged that there had been no reasonable suspicion that he had committed a criminal offence and that the domestic authorities had failed to furnish sufficient facts and information to create a reasonable suspicion that he had committed any criminal offence.

53. The Court reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 53, Series A no. 145-B, and *Erdagöz v. Turkey*, 22 October 1997, § 51, *Reports of Judgments and Decisions* 1997-VI). Neither is it necessary that the person detained should ultimately have been charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or discontinuing suspicions which provide the grounds for detention. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A). However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words “reasonable suspicion” mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182, and *Cebotari v. Moldova*, no. 35615/06, § 48, 13 November 2007).

54. In the present case, the applicant was suspected of complicity in planning an attempted forcible and illegal usurpation of State power and the attempted organisation of mass disorder. It is not disputed that these types of actions qualified as criminal offences under the domestic law.

55. It appears that the initial suspicion against the applicant was based on the statements of other persons who were suspected of participation in an alleged conspiracy by several current and former State officials aimed at usurping State power by illegal means. Although the applicant argued that these statements were false and improbable, the Court holds that, within the meaning of the previously cited case-law, such evidence objectively linked the applicant to the alleged criminal offence and was sufficient to have created “reasonable suspicion” against him.

56. For these reasons, the Court finds that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Lawfulness of the applicant's initial detention prior to being brought before a judge

57. The Government submitted that the applicant had never raised before the domestic courts the complaint concerning his alleged detention in excess of the maximum forty-eight hours permitted by domestic law prior to being brought before a judge. Furthermore, the Government argued that the applicant's detention had begun at 10.00 p.m. on 22 October 2005 and that he had been brought before a judge on 24 October 2005 at 5.40 p.m., thus the forty-eight hour period permitted by law had been respected.

58. The applicant contested the Government's submissions. In particular, he alleged that he had been arrested on 21 October 2005 and had not been brought before a judge until 24 October 2005.

59. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring their case against the State before the Court to use first the remedies provided by the national legal system, thus dispensing the States from answering before an international body for their actions before they have had an opportunity to put matters right through their own legal systems. In order to comply with this rule, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI).

60. In the present case, the Court observes that the applicant did not raise a complaint in this regard before the judge who decided on his detention on 24 October 2005. He also failed to raise such a complaint in his appeal against this detention order, as well as in the proceedings before the Court of Appeal, which upheld the detention order in question on 28 October 2005. Moreover, he has never properly raised this complaint before any other domestic authority at any other time.

61. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

C. Lawfulness of the applicant's detention from 22 October 2006 to 31 October 2006

62. The Government submitted that the applicant had failed to raise this issue before the domestic authorities. The Government also noted that the applicant's detention from 22 October to 31 October had been lawful and based on the Assize Court's decision of 6 October 2006.

63. The applicant argued that there had been no legal basis for his detention from 22 October 2006 to 31 October 2006, because the maximum period permitted for being remanded in custody, as extended by the Nasimi District Court's decision of 16 May 2006, had been exceeded on 22 October 2006.

64. The Court finds that it is not necessary to examine whether the applicant has exhausted domestic remedies as, assuming that he has done so, the complaint is in any event inadmissible for the following reasons.

65. The Court observes that the period of the applicant's pre-trial detention, authorised by the Nasimi District Court's last detention order of 16 May 2006, was to end on 22 October 2006. In the meantime, on 25 September 2006 the investigation had been completed and the bill of indictment had been sent to the Assize Court, which commenced the trial proceedings. Following its preliminary hearing, on 6 October 2006 the Assize Court ordered, among other things, that the preventive measure of remand in custody that had been applied in respect of the applicant remain "unchanged".

66. In this connection, the Court notes that it has found a violation of Article 5 § 1 in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that a bill of indictment had been filed with a trial court. It has held that detaining defendants without a specific legal basis or clear rules governing their situation – with the result that they may be deprived of their liberty for an unlimited period of time without judicial authorisation – is incompatible with the principles of legal certainty and the protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see, among other cases, *Baranowski v. Poland*, no. 28358/95, §§ 53-57, ECHR 2000-III; *Jėčius v. Lithuania*, no. 34578/97, §§ 60-63, ECHR 2000-IX; *Grauslys v. Lithuania*, no. 36743/97, §§ 39-40, 10 October 2000; and *Gigolashvili v. Georgia*, no. 18145/05, §§ 33-36, 8 July 2008).

67. However, unlike in the above-mentioned cases, the applicant in the present case was not detained after the term of his pre-trial detention had ended solely on the basis of the fact that a bill of indictment had been filed with a trial court, but on the basis of the Assize Court's decision of 6 October 2006 which was delivered before the period of pre-trial detention authorised by the Nasimi District Court came to an end. The Court notes that the Assize Court examined in its preparatory hearing, *inter alia*, the

application of the preventive measure of remand in custody in respect of the applicant as required by the domestic law and decided that it should remain unchanged. In this regard, the Court reiterates that a period of detention is, in principle, “lawful” if it is based on a court order. Even flaws in the detention order do not necessarily render the underlying period of detention unlawful within the meaning of Article 5 § 1 (see *Benham v. the United Kingdom*, 10 June 1996, §§ 42-47, *Reports of Judgments and Decisions* 1996-III, and *Jėčius*, cited above, § 68).

68. The Court thus finds that for the period from 22 October to 31 October 2006 there was a valid court order authorising the applicant's continued detention. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

69. The applicant complained that he had not been informed promptly of the reasons for his arrest and of the charges against him. The relevant part of Article 5 § 2 of the Convention reads as follows:

“Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.”

70. The Government submitted that the applicant had been informed promptly of the reasons for his arrest and of the charges against him when he was arrested as a suspect on 22 October 2005.

71. The applicant reiterated his complaint.

72. The Court notes that Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with Article 5 § 4. Whilst this information must be conveyed “promptly”, it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (see *Fox, Campbell and Hartley*, cited above, § 40).

73. Turning to the circumstances of the present case, the Court notes that it is not disputed that the applicant was informed of the reasons for his arrest on 22 October 2005 when the investigator issued a protocol on his forty-eight hour detention as a suspected person. He was also informed of the charges brought against him on 24 October 2005 by a decision of the investigator in charge of the criminal case.

74. The Court further observes that, despite two different versions of events concerning the circumstances of the applicant's arrest as submitted by the parties, it is clear that the applicant had been aware of the criminal case in connection with which he had been summoned to the MNS when he had a conversation on the telephone with the Minister of National Security. The Court notes that after his arrival at the MNS building the applicant was questioned about his alleged links with other persons already arrested in connection with the criminal case in question and he could have gained some idea of what he was suspected of (compare, *mutatis mutandis*, *Dikme v. Turkey*, no. 20869/92, § 56, ECHR 2000-VIII).

75. For these reasons, the Court finds that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

76. The applicant complained under Article 5 § 1 of the Convention that his pre-trial detention had been unreasonably long and that no relevant and sufficient reasons had been offered to justify his continued detention. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which provides as follows:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

77. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

78. The Government contested the applicant's arguments. The Government submitted that the subsequent extensions of the applicant's pre-trial detention had been justified.

79. The applicant reiterated his complaint.

80. According to the Court's established case-law, the presumption under Article 5 is in favour of release. The second limb of Article 5 § 3 does not give judicial authorities a choice between bringing an accused to trial within a reasonable time and granting him provisional release pending trial.

Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X, and *Bykov v. Russia* [GC], no. 4378/02, § 61, ECHR 2009-...).

81. The question whether or not a period of detention is reasonable cannot be assessed in the abstract. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty laid down in Article 5 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 152, ECHR 2000-IV, and *Kudla v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI).

82. The responsibility falls in the first place to the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time. To this end they must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of the above-mentioned demand of public interest justifying a departure from the rule in Article 5 and must set them out in their decisions on the applications for release. It is essentially on the basis of the reasons given in these decisions and of the established facts stated by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 (see, for example, *Weinsztal v. Poland*, no. 43748/98, § 50, 30 May 2006; *Labita*, cited above, § 152; and *McKay*, cited above, § 43).

83. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but with the lapse of time this no longer suffices and the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also be satisfied that the national authorities displayed “special diligence” in the conduct of the proceedings (see, among other authorities, *Letellier v. France*, 26 June 1991, § 35, Series A no. 207, and *Yağcı and Sargin v. Turkey*, 8 June 1995, § 50, Series A no. 319-A). The burden of proof in these matters should not be reversed by making it incumbent on the detained person to demonstrate the existence of reasons warranting his release (see *Ilykov v. Bulgaria*, no. 33977/96, § 85, 26 July 2001).

84. Turning to the circumstances of the instant case, the Court notes that the period to be taken into consideration for the purposes of Article 5 § 3 begins on the day the accused is taken into custody and ends on “the day when the charge is determined, even if only by a court of first instance” (see *Kalashnikov v. Russia*, no. 47095/99, § 110, ECHR 2002-VI, and *Labita*,

cited above, § 147). In the present case this period commenced on 22 October 2005, when the applicant was arrested, and ended on 31 October 2006, when the Assize Court delivered its judgment convicting him. Thus, the applicant's pre-trial detention lasted one year and nine days in total.

85. The Court accepts that the existence of a reasonable suspicion that the applicant had committed serious criminal offences may have initially sufficed to warrant his detention. However, with the passage of time that ground inevitably became less and less relevant and his continued detention had to be justified by other relevant reasons, taking into account his personal situation (see, among other authorities, *Łaszkiewicz v. Poland*, no. 28481/03, § 57, 15 January 2008, and *Matyush v. Russia*, no. 14850/03, § 87, 9 December 2008).

86. During the pre-trial investigation stage of the proceedings, the applicant's detention was extended twice by the Nasimi District Court, by its decisions of 14 January and 16 May 2006. Both decisions were upheld by the Court of Appeal following the applicant's appeals in which he argued for his release. Moreover, the Nasimi District Court and the Court of Appeal, on 9 and 16 August 2006 respectively, refused the applicant's request to be placed under house arrest in lieu of being remanded in custody. Lastly, at the trial stage of the proceedings, the applicant's detention was extended by the decision of the Assize Court of 6 October 2006.

87. As for the decision of the Nasimi District Court of 14 January 2006, as upheld by the decision of the Court of Appeal of 10 February 2006 ordering the first extension of the applicant's pre-trial detention by a period of four months, the applicant's continued detention was justified on the grounds of the gravity of the charges and the likelihood of his absconding using his alleged contacts abroad and exerting pressure on persons participating in the proceedings. In this connection, the Court notes that, while the severity of the sentence faced is one of the relevant elements in the assessment of the risk of absconding, the gravity of the charges cannot by itself serve to justify long periods of detention on remand (see *Ilykov*, cited above, §§ 80-81). Moreover, the risk of absconding, which may justify detention, cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko v. Russia*, no. 45100/98, § 106, 8 February 2005, and *Letellier*, cited above, § 43). In the present case, however, the judicial decisions did not go any further than listing the above-mentioned grounds, including the risk of absconding, using a standard formula paraphrasing the terms of the CCrP (compare *Giorgi Nikolaishvili*, cited above, §§ 23-24, 28, 76 and 79). They failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons.

88. As to the Nasimi District Court's decision of 16 May 2006 and the Court of Appeal's decision of 31 May 2006 on the second extension of the applicant's detention for a period of five months, the applicant's continued detention was justified by the fact that, following the discovery of new evidence concerning the applicant's possible involvement in other crimes, more time was needed to complete the investigation and that there were sufficient grounds to believe that the applicant would abscond, influence the persons involved in the criminal process and interfere with the administration of justice. However, the Court observes that in May 2006, when the domestic courts extended the applicant's continued detention relying on the discovery of "new evidence" concerning his alleged involvement in other crimes, there were no new criminal charges against him in connection with such other alleged crimes. The applicant was not charged with new criminal offences until 13 September 2006, almost four months after the extension order. Therefore, the reasons provided by the domestic courts in their decisions of 16 May and 31 May 2006 for the applicant's continued detention for a period of five months were irrelevant, as they justified his detention with reference to a suspicion of criminal offences with which the applicant was not even charged.

89. Accordingly, the Court notes that the domestic courts continued to use the same standard formula and their reasoning did not evolve with the passing of time to reflect the developing situation and to verify whether these grounds remained valid at the later stages of the proceedings. They did not describe in detail either the grounds retained in respect of the applicant's pre-trial detention or his personal situation, such as his permanent residence and family ties, positive work references and the absence of a criminal record. Moreover, as stated above, the decisions of 16 May and 31 May 2006 relied on irrelevant reasons to justify the applicant's continued detention.

90. The Court is not denying that there may have existed specific, relevant facts warranting the applicant's deprivation of liberty. However, even if such facts existed, they were not set out in the relevant domestic decisions. It is not the Court's task to take the place of the national authorities and establish such facts in their stead (see *Ilykov*, cited above, § 86; *Panchenko*, cited above, § 105; and *Giorgi Nikolaishvili*, cited above, § 77).

91. In view of the foregoing considerations, the Court concludes that, by using a standard formula merely listing the grounds for detention without addressing the specific facts of the applicant's case, as well as relying on irrelevant grounds, the authorities failed to give "relevant" and "sufficient" reasons to justify extending the applicant's pre-trial detention by one year and nine days.

92. There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

93. The applicant complained that the joint statement made by the Prosecutor General's Office, the MNS and the Ministry of Internal Affairs to the press on 25 October 2005 had amounted to an infringement of his right to the presumption of innocence. He also complained that, in the decisions of 14 January 2006 of the Nasimi District Court and of 10 February 2006 of the Court of Appeal ordering and extending his pre-trial detention, the domestic courts had also breached his presumption of innocence by prejudging his guilt before he was proved guilty at the outcome of the criminal trial. Article 6 § 2 of the Convention provides as follows:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

A. Admissibility

94. The Government submitted that the applicant had not exhausted all available and effective domestic remedies in respect of the impugned joint statement of law enforcement authorities. In this regard, the Government submitted that the applicant could make use of the procedure concerning appeals against the prosecution authorities' actions and decisions set out in Articles 449-451 of the CCrP or lodge a criminal complaint for defamation. The Government did not comment on the part of the complaint concerning the alleged breach of the presumption of innocence by the domestic courts.

95. The applicant reiterated his complaints.

96. In so far as the applicant complained about the alleged breach of his right to the presumption of innocence by the domestic courts in their decisions of 14 January and 10 February 2006 ordering and extending his pre-trial detention, the Court, having carefully examined the relevant texts, finds that none of them contains any wording that could be interpreted as prematurely declaring the applicant guilty of the offences with which he was charged. It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

97. As for the remainder of the complaint, the Court reiterates that Article 35 § 1 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Akdivar and Others v. Turkey*,

16 September 1996, § 68, *Reports of Judgments and Decisions* 1996-IV, and *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V). The Court further emphasises that the domestic remedies must be “effective” in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that has already occurred (see *Kudla*, cited above, § 158).

98. Although the Government argued that the domestic law provided for effective remedies in the form of the procedure set out in Articles 449-451 of the CCrP or a criminal complaint for defamation, which were in theory capable of providing redress in respect of the alleged breach of the presumption of innocence, the Court notes that the Government have not submitted any specific examples of previous successful use of the above-mentioned avenues of redress in connection with complaints alleging a breach of the presumption of innocence (see, *mutatis mutandis*, *Matijašević v. Serbia*, no. 23037/04, § 32, ECHR 2006-X). Nor have the Government been able to demonstrate, by means of specific examples, that any complaints concerning this particular substantive subject matter have ever been even accepted for examination by the relevant criminal authorities or civil courts under the procedures they mentioned. In such circumstances, the Court cannot conclude that any of the remedies mentioned by the Government could be used specifically in relation to the breaches alleged or that the existence of such remedies, in practice, was sufficiently certain.

99. Therefore, the Government's objection should be dismissed. The Court considers that this part of the complaint is not otherwise manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

100. The Government did not make any submission on the merits of this complaint.

101. The applicant maintained his complaint.

102. The Court reiterates that Article 6 § 2, in its relevant aspect, is aimed at preventing a fair criminal trial being undermined by prejudicial statements made in close connection with those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of the fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308). It not only prohibits the premature expression by the tribunal itself of the opinion that the person “charged with a criminal offence” is guilty before he has been so proved according to law (see *Minelli v. Switzerland*, 25 March 1983, § 38, Series A no. 62), but also covers statements made by other public officials about pending criminal investigations which encourage the public to believe the suspect guilty and prejudge the assessment of the facts

by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41, and *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X). The Court stresses that Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38).

103. It has been the Court's consistent approach that the presumption of innocence is violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008, with further references). Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Butkevičius v. Lithuania*, no. 48297/99, § 49, ECHR 2002-II).

104. Article 6 § 2 governs criminal proceedings in their entirety and a person charged with a criminal offence has a right to be presumed innocent throughout the proceedings, irrespective of whether or not he or she is ultimately found guilty by the competent court (see, *mutatis mutandis*, *Minelli*, cited above, § 30, and *Matijašević*, cited above, § 49).

105. The Court notes that in the present case the impugned statement was made to the press, in a context independent of the criminal proceedings themselves. The Court acknowledges that the fact that the applicant, as former Head of the Administrative Department of the Office of the President, was a high-ranking State official may have required the authorities to keep the public informed of the criminal accusations against him and the ensuing criminal proceedings. However, this circumstance cannot justify a lack of caution in the choice of words used by the authorities in their statement. Moreover, in the present case, the statement at issue was made at the time when the criminal investigation against the applicant had just been started.

106. The Court accepts that the primary purpose of the impugned statement may have been to inform the public of, and the reasons for, the institution of criminal proceedings against the applicant and several other State officials. However, the Court considers that the specific content of that

statement, including the choice of words used in it, is not acceptable from the standpoint of Article 6 § 2.

107. The Court observes that the joint statement in question described the alleged involvement of the applicant and other arrested persons in a criminal offence relying on the testimony of several arrested persons. Having examined the text of the joint statement, the Court considers that, from the very beginning, the wording used was imperative and affirmative. In particular, it was stated that “it has been established that Akif Muradverdiyev ... and Fikret Sadygov ... conspired with Rasul Guliyev ..., as well as with ... Ali Insanov, ... Farhad Aliyev, ... Fikret Yusifov and other persons interested in capturing power by force. During their secret meetings ..., they agreed on the unlawful usurpation of State power, the organisation of sabotage groups recruited for planned mass disorder and the financial support for these activities”. The Court considers that these remarks made by three law-enforcement authorities in their joint statement, made without any reservation or circumspection, were in disregard of the applicant's presumption of innocence.

108. Given that the above official statement was made jointly by three different law-enforcement bodies competent to conduct criminal prosecution on behalf of the State, particular caution should have been exercised by them in the choice of words used to describe the pending criminal proceedings. The Court considers that that statement, made without the necessary qualifications or reservations, contained wording amounting to a declaration that the applicant had committed certain criminal offences. As such, they prejudged the assessment of the facts by the competent judicial authority and could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

109. The Court finds that there has been a violation of Article 6 § 2 of the Convention.

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

110. In conjunction with Article 5 of the Convention, the applicant complained under Articles 13 and 14 of the Convention that the domestic remedies had been ineffective and that he had been discriminated against owing to his political opinions.

111. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court considers that this part of the application does not disclose any appearance of a violation of the Convention. It follows that it is inadmissible under Article 35 § 3 as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

112. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

113. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints under Article 5 § 3 and Article 6 § 2 concerning the lawfulness of the applicant's continued pre-trial detention and his right to the presumption of innocence in respect of the joint statement of three law-enforcement authorities admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds* that there has been a violation of Article 6 § 2 of the Convention;
4. *Holds* that there is no call to award any just satisfaction.

Done in English, and notified in writing on 9 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President