



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

FIRST SECTION

CASE OF YAGUBLU v. AZERBAIJAN

(Application no. 31709/13)

JUDGMENT

STRASBOURG

5 November 2015

FINAL

05/02/2016

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

In the case of Yagublu v. Azerbaijan,

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

András Sajó, *President*,

Elisabeth Steiner,

Khanlar Hajiyeu,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Paulo Pinto de Albuquerque,

Linós-Alexandre Sicilianos, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 13 October 2015,

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

PROCEDURE

1. The case originated in an application (no. 31709/13) 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 Tofiq Rashid oglu Yagublu (*Tofiq Rəşid oğlu Yaqublu* - “the applicant”), on 7 May 2013.

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

3. The applicant alleged that his right to liberty under Article 5 of the Convention had been breached, because there had been no reasonable suspicion that he had committed a criminal offence and the domestic courts had failed to justify the necessity of the application of detention pending trial.

4. On 13 February 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1961 and lives in Baku.

6. He was the Deputy Chairman of the Musavat Party. He also worked as a columnist for the *Yeni Musavat* newspaper.

A. Events in Ismayilli in January 2013

7. On 23 January 2013 rioting broke out in the town of Ismayilli, located to the northwest of Baku. According to media reports quoting local residents, the rioting was sparked by an incident involving V.A., the son of the Minister for Labour and Social Protection and nephew of the Head of the Ismayilli District Executive Authority (“the IDEA”). It was claimed that after being involved in a car accident, V.A. had insulted and physically assaulted passengers travelling in the other car involved in the accident, who were local residents. On hearing of the incident, hundreds (perhaps thousands) of local residents took to the streets and destroyed a number of commercial establishments and other properties in Ismayilli thought to be owned by V.A.’s family.

8. On 24 January 2013 the Ministry of Internal Affairs and the Prosecutor General’s Office issued a joint press statement, placing the blame for the rioting on E.S., a hotel manager, and his relative E.M., who had allegedly been drunk and who, it was claimed, had committed acts of hooliganism by damaging local residents’ property and inciting people to riot.

B. The applicant’s role in the events in Ismayilli

1. The applicant’s version of the events

9. On 24 January 2013 the *Yeni Musavat* newspaper decided to send the applicant on a mission to Ismayilli to cover the events in question. A mission order (no. 28) was issued in this respect by the *Yeni Musavat* for the period from 24 to 25 January 2013.

10. On 24 January 2013 the applicant travelled to Ismayilli with three other persons. He arrived there in the afternoon. In the city centre he saw Ilgar Mammadov, the Chairman of the Republican Alternative Civic Movement (“REAL”), who was also visiting the town separately from the applicant. They stopped to greet each other and immediately went their separate ways.

11. Approximately twenty minutes after his arrival in the town, the applicant was arrested by the police and was taken to the local police station. In the police station the applicant was ordered to leave Ismayilli and was sent to Baku in his own car accompanied by a police car.

2. The Government’s version of the events

12. The Government did not submit any comment in respect of the applicant’s submissions.

C. Institution of criminal proceedings against the applicant

13. On 29 January 2013 the Prosecutor General's Office and the Ministry of Internal Affairs issued a further joint press statement concerning the events in Ismayilli. It stated that ten people had been charged with criminal offences in connection with the events of 23 January 2013 and they had been detained pending trial. In addition, fifty-two people had been arrested in connection with their participation in "actions causing a serious breach of public order"; some of them had been convicted of "administrative offences" and sentenced to a few days' "administrative detention" or a fine, while others had been released. The statement further noted that "lately, biased and partial information has been deliberately disseminated, distorting the true nature of these events which were the result of hooliganism", including information about the large numbers of injured people and the disappearance of one individual. The statement refuted that information, highlighting that only four people had been admitted to the regional hospital with injuries and that no one had disappeared. It further stated, *inter alia*, the following:

"Following the carrying out of enquiries, it has been established that on 24 January 2013 the Deputy Chairman of the Musavat Party, Tofiq Yagublu, and the co-Chairman of the REAL Movement, Ilgar Mammadov, went to Ismayilli and made appeals to local residents with a view to engendering social and political destabilisation. These included calls to resist the police, not to obey officials and to block roads. Their illegal actions, which were calculated to inflame the situation in the country, will be fully and thoroughly investigated and receive legal assessment."

14. On 1 February 2013 the applicant was questioned as a witness by an investigator at the Serious Crimes Department ("the SCD") of the Prosecutor General's Office in connection with the Ismayilli events. After the questioning ended, he left the premises of the SCD and returned home. Despite the Court's explicit request to the Government to submit copies of all documents relating to the proceedings in question, the Government failed to provide the Court with a copy of the record of the questioning.

15. On 4 February 2013 the applicant was again questioned by the investigator. Moreover, according to the applicant, face-to-face confrontations were held between the applicant and two persons, R.N. and I.M., who attested that the applicant had incited protesters to throw stones at and to disobey the police. The applicant rejected the accusations against him submitting that they were false and fabricated.

16. Despite the Court's explicit request to the Government to submit copies of all documents relating to the proceedings in question, the Government failed to provide the Court with a copy of the record of the questioning, or of the face-to-face confrontations between the applicant and R.N. and I.M. These confrontations were not mentioned in the official charges against the applicant (see paragraph 17 below) or in any other

official document made available to the Court by the parties relating to the applicant's pre-trial detention.

17. On the same day the applicant was charged with criminal offences under Articles 233 (organising or actively participating in actions causing a breach of public order) and 315.2 (resistance to or violence against public officials, posing a threat to their life or health) of the Criminal Code. The specific acts attributed to the applicant were described as follows in the investigator's decision of 4 February 2013:

“Beginning at around 3 p.m. on 24 January 2013, Yagublu Tofiq Rashid oğlu,

having taken advantage of the fact that from around 9.30 p.m. on 23 January 2013 a group of persons in the town of Ismayilli had engaged in acts of malicious hooliganism causing a serious breach of public order, had deliberately burned, in a publicly dangerous manner, property belonging to various persons [including] the Chirag Hotel, four cars, five mopeds and scooters, and an auxiliary building located in the yard of a private residential house, and had committed acts of violence against Government officials,

having, in his false way of thinking, considered [the above events] as a ‘rebellion’,

aiming to make the above acts develop and acquire a continuous character in order to create artificial tension and to violate the social and political stability in the country,

being a resident of Baku, arrived in Ismayilli and, together with Mammadov İlgar Eldar oğlu and with the active participation of others, [committed the following:]

organised, as an active participant, acts causing a serious breach of public order, by means of openly and repeatedly inciting town residents [E.I.], [M.A.] and others, who had gathered at the square near the administrative building of the Regional Education Department located on the Nariman Narimanov Street opposite to the administrative building of [the IDEA], [to do the following:]

[i] to enter in masses into the area in front of the building of [the IDEA], which is the competent body of the executive power of the Republic of Azerbaijan, and by doing so to create difficulties for the movement of traffic and pedestrians, [ii] to disobey the lawful demands to disperse, made by Government officials wanting to stop their illegal behaviour, [iii] to resist uniformed police officers protecting the public order, by way of committing violent acts posing danger to [police officers'] life and health, using various objects, [iv] to disrupt the normal functioning of [the IDEA], State enterprises, bodies and organisations, as well as public-catering, commercial and public-service facilities, by way of refusing to leave, for a long period of time, the areas where the acts seriously breaching the public order were being committed, and [v] to stop the movement of traffic, by way of blocking the central avenue and the Nariman Narimanov Street, and

was finally able to achieve that, at around 5 p.m. of the same day in the town of Ismayilli, a group of persons consisting of [E.I.], [M.A.] and others had marched in masses from the mentioned square in the direction of the administrative building of [the IDEA] and had thrown stones at officers of the relevant bodies of the Ministry of Internal Affairs who were preventing [this march] in accordance with the requirements of the law.

By these actions, Yagublu Tofiq Rashid oğlu committed the criminal offences under Articles 233 and 315.2 of the Criminal Code of the Republic of Azerbaijan.”

D. The applicant's detention pending trial

18. On 4 February 2013 the prosecutor lodged a request with the Nasimi District Court asking for the application of the preventive measure of remand in custody (*həbs qətimkan tədbiri*) in respect of the applicant. Despite the Court's explicit request to the Government to submit copies of all documents relating to the proceedings in question, the Government failed to provide the Court with a copy of the prosecutor's request.

19. On the same day a hearing was held before the Nasimi District Court in the presence of the applicant, his lawyer, an investigator and a prosecutor. It appears from the court decision that at the hearing, to explain the necessity of pre-trial detention, the investigator and the prosecutor gave reasons such as the likelihood of the applicant absconding from and obstructing the investigation, and the nature of the criminal acts attributed to him. However, they did not refer to any evidence implicating the applicant in the events in Ismayilli. The applicant and his lawyer submitted that the accusation against the applicant was groundless and was not supported by any evidence. In particular, the applicant submitted that he had visited Ismayilli as a journalist to cover the events there and he had spent only thirty minutes in total in the town. He also stated that he had had no other link to the events in question. The applicant's lawyer stated that there were no reasons to believe that the applicant would abscond from or interfere with the investigation.

20. By a decision of 4 February 2013, the Nasimi District Court ordered the applicant to be detained for a period of two months pending trial. The relevant part of the decision read as follows:

"The materials collected in respect of the criminal investigation give rise to sufficient grounds to believe initially, in accordance with the principle of presumption, that Yagublu Tofiq Rashid oğlu committed the acts provided for in Articles 233 and 315.2 of the Criminal Code of the Republic of Azerbaijan in force.

Taking into account the character and degree of danger to the public of the criminal offences attributed to the accused, the fact that he is charged with a criminal offence qualified as less serious crime, as well as the existence of sufficient grounds to believe that, if released, he would abscond from the investigation and the court or influence other persons involved in the proceedings, the court considers that the request must be granted and the preventive measure of remand in custody must be applied in his respect."

21. On an unspecified date the applicant appealed against this decision. He complained that there was no evidence that he had committed any criminal offence and there had been no justification for the application of the preventive measure of detention pending trial.

22. On 8 February 2013 the Baku Court of Appeal dismissed the applicant's appeal, finding that the detention order was justified. In this connection the appellate court held that the first-instance court had correctly taken into account the fact that the applicant had been charged with a less

serious criminal offence punishable by more than two years' imprisonment, and the likelihood that if released he might abscond from the investigation and obstruct the normal functioning of the investigation.

E. Public reaction to the applicant's arrest and criminal proceedings against him

23. The applicant's arrest and the institution of criminal proceedings against him attracted significant public and media interest both inside the country and internationally.

24. Immediately after the applicant's arrest, a number of domestic NGOs, as well as international NGOs such as Amnesty International and Human Rights Watch, condemned the authorities' actions, deeming the arrest to be "politically motivated persecution" on "trumped up" charges.

25. On 6 February 2013, Pedro Agramunt and Joseph Debono Grech, PACE Monitoring Committee co-rapporteurs on Azerbaijan, expressed their concern at the arrest of the applicant, noting that it "gave rise to justified doubts and legitimate concerns" and urging the authorities to release the applicant and Ilgar Mammadov.

26. On 8 February 2013, Thorbjørn Jagland, the Secretary General of the Council of Europe, made the following official statement:

"I am concerned by the recent events in Azerbaijan and the heavy-handed response of the police to the protests. I am particularly disturbed by the arrest on 4 February of Tofiq Yagublu and Ilgar Mammadov, in relation to recent events in Ismayilli.

Mr Mammadov is the Director of the Baku School of Political Studies, a close co-operation partner of the Council of Europe. Today's decision of the Baku Court of Appeal not to release these two men and its refusal to allow the Council of Europe's representative to be present during the court proceedings is of particular gravity.

I call on the authorities of Azerbaijan to respect the fundamental principles and legally-binding standards of the European Convention of Human Rights, which they have undertaken to uphold when joining the Council of Europe."

F. Extension of the applicant's pre-trial detention and further developments

27. On an unspecified date the applicant lodged a request with the Nasimi District Court asking to be put under house arrest in place of pre-trial detention. He claimed, in particular, that his detention had not been justified and that there was no reason for its continuation. In support of his request, the applicant pointed out that he had a permanent place of residence and that there was no risk of his absconding from or obstructing the investigation.

28. On 5 March 2013 the Nasimi District Court dismissed the request and found that the preventive measure should be left “unchanged”. The relevant part of the decision read:

“Taking into account the character and degree of danger to the public of the criminal offences attributed to the accused, the court considers that it is not possible to attain the objective of the preventive measure without keeping the accused Yagublu Tofiq Rashid oglu in detention and totally isolating him from society. For this reason, the request must be dismissed in accordance with Article 163 of the Code of Criminal Procedure of the Republic of Azerbaijan.”

29. On 14 March 2013 the Baku Court of Appeal upheld the Nasimi District Court’s decision of 5 March 2013.

30. On an unspecified date the prosecutor lodged a request with the court asking for an extension of the applicant’s pre-trial detention by two months, noting that more time was needed to complete the investigation. Despite the Court’s explicit request to the Government to submit copies of all documents relating to the proceedings in question, the Government failed to provide the Court with a copy of the prosecutor’s request.

31. On 18 March 2013 the Nasimi District Court examined the prosecutor’s request for the extension of the applicant’s detention period. At the hearing, the applicant and his lawyer asked the judge to dismiss the prosecutor’s request, submitting that the applicant had not committed any criminal offence and had no link to the events in Ismayilli. The applicant’s lawyer also submitted that the applicant had always cooperated with the investigation, that there was no risk of his absconding, and that the investigation had failed to justify his continued detention. On the same date the judge extended the applicant’s detention pending trial by two months, until 6 June 2013. He substantiated the necessity of the extension of the applicant’s detention as follows:

“Taking into account that the pre-trial detention period of Tofiq Yagublu ends on 4 April 2013 and that it is not possible to carry out the investigative steps indicated in the request during the remaining period of time, as well as the existence of sufficient grounds to believe that, if released, he would abscond from the investigation and thus fail to comply with requests to meet with investigators without any good reason, and disrupt the normal course of the investigation by unlawfully influencing persons involved in the proceedings and having regard to the character of the acts attributed to him, the court considers that the detention period of Tofiq Yagublu must be extended for a period of two months, namely until 4 June 2013.”

32. On an unspecified date the applicant appealed against this decision, claiming that the extension of his detention was unlawful. He noted, in particular, that there was no evidence that he had committed any criminal offence, that the investigating authorities had not taken any investigative steps, and that the first-instance court had not taken into account his family situation, place of residence or other personal circumstances when it had extended his detention.

33. On 29 March 2013 the Baku Court of Appeal dismissed the applicant's appeal. The appellate court made no mention of the applicant's specific complaints.

34. It appears from the case file that on 25 April 2013 the applicant was charged with new criminal offences under Articles 220.1 (mass disorder) and 315.2 (resistance to or violence against public officials, posing a threat to their life or health) of the Criminal Code. In essence, the charge under Article 220.1, which carried a much heavier sentence (four to twelve years' imprisonment), replaced the previous charge under Article 233. The investigator's decision in this respect was not made available to the Court by the Government.

35. One of the effects of the new charge under Article 220.1 of the Criminal Code was that the applicant could no longer apply for bail, because the law did not permit individuals accused of deliberately committing "serious crimes" to be released on bail. Moreover, as a person charged with a serious crime, the applicant's pre-trial detention could now be extended for a longer period overall.

36. It appears from the case file that on 15 May 2013 the Nasimi District Court decided to extend the applicant's detention period for a further three months. The Government did not provide the Court with a copy of the Nasimi District Court's decision of 15 May 2013.

37. On 21 May 2013 the Baku Court of Appeal upheld the Nasimi District Court's decision of 15 May 2013. The relevant part of the appellate court's decision read as follows:

"Relying on the above mentioned, the panel of the court considers that the first-instance court took into account: the fact that the grounds for the detention of Yagublu Tofiq Rashid oglu are still valid; that a number of investigative steps still needed to be taken for the completion of the investigation; the complexity of the criminal case; the gravity of the criminal offence committed by the accused; and the existence of sufficient grounds to believe that, if released, he would abscond from the investigation. [The first-instance court] reached a correct, lawful and justified conclusion concerning the necessity of the extension of the detention period of Yagublu Tofiq Rashid oglu."

38. On 13 August 2013 the Nasimi District Court extended the applicant's detention for a period of three months, that is to say until 4 December 2013. It appears from the decision that the applicant and his lawyer stated before the court that the applicant had not played any role in the events of Ismayilli and had not committed any criminal offence. They further submitted that the applicant had always cooperated with the investigation and that there was no risk of his absconding. The relevant part of the decision of 13 August 2013 read as follows:

"Taking into account that the pre-trial detention period of Tofiq Yagublu ends on 4 September 2013, that numerous persons were involved in the proceedings the size of the case file, the complexity of the criminal case, the necessity of carrying out the investigative steps indicated in the request and that sufficient time was needed to do

so, and that it is not possible to carry out these steps indicated in the request during the remaining period of time, as well as the existence of sufficient grounds to believe that, if released, he would abscond from the investigation and fail to answer calls to meet with investigators without any good reason, and disrupt the normal course of the investigation by unlawfully influencing persons involved in the proceedings, and the nature of the act attributed to him, the court considers that the detention of Tofiq Yagublu must be extended for a period of three months, that is to say until 4 December 2013.”

39. On an unspecified date the applicant appealed against this decision reiterating his previous complaints.

40. On 22 August 2013 the Baku Court of Appeal dismissed the appeal. The appellate court’s reasoning was essentially the same as in the previous extension decisions.

41. No further extension decisions were included in the case file.

42. The applicant’s criminal trial began in November 2013. On 17 March 2014 the Shaki Serious Crimes Court convicted the applicant and sentenced him to five years’ imprisonment.

43. On 24 September 2014 the Shaki Court of Appeal upheld the applicant’s conviction.

44. The applicant’s cassation appeal is pending before the Supreme Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

45. The relevant provisions of the domestic law and practice concerning pre-trial detention and its application as a preventive measure are described in detail in the Court’s judgment in *Ilgar Mammadov v. Azerbaijan* (no. 15172/13, §§ 68-76, 22 May 2014).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (c) AND 3 OF THE CONVENTION

46. Relying on Article 5 §§ 1 (c) and 3 of the Convention, the applicant complained that he had been arrested and detained in the absence of a “reasonable suspicion” that he had committed a criminal offence. He further complained that the domestic courts had failed to provide relevant and sufficient reasons justifying the necessity of his continued detention. Article 5 §§ 1 (c) and 3 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;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and 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

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

B. Merits

1. The parties' submissions

(a) The Government

48. The Government submitted that the applicant's rights under Article 5 of the Convention had not been breached. They submitted that the applicant had been detained on reasonable suspicion of having committed an offence and the domestic courts had duly examined the material submitted by the prosecuting authorities. They also noted that the transcripts of the court hearings addressed this issue. The Government further submitted that the domestic courts had dismissed the applicant's request to be put under house arrest instead of being kept in detention by having regard to the circumstances of the case.

(b) The applicant

49. The applicant maintained that the accusations against him had been groundless and that all the steps taken by the authorities to prosecute and detain him had been arbitrary and politically motivated. The prosecuting authorities had not been in possession of any objective evidence or information that could have given rise to a “reasonable suspicion” that he had committed a criminal offence.

50. In this connection, the applicant submitted that on 4 February 2013 when the Nasimi District Court had initially ordered his detention pending trial there had been no evidence in the case file, except his statement

rejecting the accusations against him. Moreover, the only document which had been submitted to the domestic courts which were due to decide on his pre-trial detention had been the prosecutor's request for the application of the preventive measure of remand in custody in his respect. The applicant disputed the Government's assertion that the courts had duly examined the material submitted by the prosecuting authorities, pointing out that, although the Government referred to the transcripts of the court hearings in support of their assertion, they had failed to submit these transcripts to the Court.

51. The applicant further argued that the domestic courts had failed to provide relevant and sufficient reasons justifying his detention. In particular, he submitted that the domestic courts had merely quoted the relevant legal provisions without making any assessment of his particular circumstances when they had ordered his detention and rejected his request for house arrest in its place.

52. Lastly, the applicant submitted that the present case was identical to the case *Ilgar Mammadov v. Azerbaijan* (no. 15172/13, 22 May 2014) in which the Court had already found a violation of Article 5 of the Convention. In particular, the applicant pointed out that the prosecuting authorities had used the same "evidence" for the detention of both the applicant and Mr Ilgar Mammadov.

2. *The Court's assessment*

(a) **General principles**

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). Nor is it necessary that the person detained should ultimately have been charged or brought before a court. The object of detention for questioning is to further a criminal investigation by confirming or dispelling 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 the criminal investigation (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A).

54. However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention (see *Gusinskiy v. Russia*, no. 70276/01, § 53, ECHR 2004-IV). 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. What may be regarded as “reasonable” will depend upon all the circumstances (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182). The length of the deprivation of liberty may also be material to the level of suspicion required (see *Murray*, cited above, § 56).

55. When assessing the “reasonableness” of the suspicion, the Court must be enabled to ascertain whether the essence of the safeguard afforded by Article 5 § 1 (c) has been secured. Consequently, the respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence (see *Fox, Campbell and Hartley*, cited above, § 34 *in fine*).

56. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a prerequisite for the lawfulness of the continued detention (see, among many other authorities, *Stögmüller v. Austria*, 10 November 1969, p. 40, § 4, Series A no. 9, and *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-X). Accordingly, while reasonable suspicion must exist at the time of the arrest and initial detention, it must also be shown, in cases of prolonged detention, that the suspicion persisted and remained “reasonable” throughout the detention (see *Ilgar Mammadov*, cited above, § 90).

(b) Application of those principles to the present case

57. The Court observes at the outset that the circumstances of the present case and the complaints raised under Article 5 of the Convention by the applicant are similar to those already examined by the Court in the case *Ilgar Mammadov v. Azerbaijan*. In particular, the applicant and Ilgar Mammadov were arrested on the same day and were charged with the same criminal offences. The decisions of the investigator of 4 February 2013 describing the acts attributed to them were identical in their wording (compare paragraph 17 above and *Ilgar Mammadov*, cited above, § 27). Moreover, the same witnesses testified against them during the face-to-face confrontations (compare paragraph 15 above and *Ilgar Mammadov*, cited above, §§ 21-26).

58. Turning to the particular circumstances of the present case, the Court observes that it is undisputed by the parties that the applicant went to Ismayilli on 24 January 2013, one day after the beginning of the events. The applicant also produced a mission order proving that he had been sent to Ismayilli by the *Yeni Musavat* for the period from 24 to 25 January 2013. Moreover, the applicant’s factual claim that on 24 January 2013 he stayed in Ismayilli for only thirty minutes, that he was then requested to leave Ismayilli by the police and was sent to Baku in his own car accompanied by a police car, was never disputed before the domestic courts or the Court. It is therefore apparent from the documents submitted to the Court that,

although on 24 January 2013 the applicant went to Ismayilli as a journalist for the *Yeni Musavat* one day after the beginning of the events and stayed there for only thirty minutes, he was charged with the criminal offences of “organising public disorder” and “violent resistance to the police”.

59. In this connection, the Court notes that the applicant complained of the lack of reasonable suspicion against him throughout the entire period of his detention, including both the initial period following his arrest and the subsequent periods when his pre-trial detention had been authorised and extended by court orders. He maintained the same complaint before the Court. The Government submitted in this respect that the applicant had been detained on reasonable suspicion of having committed an offence and the domestic courts had duly examined the material submitted by the prosecuting authorities. In support of their assertion, the Government relied on the transcripts of the court hearings.

60. However, the Court firstly points out that, although the Government referred to the transcripts of the court hearings in support of their argument, they failed to provide the Court with these transcripts. The Court further observes that the Government contented themselves with the submission that the domestic courts had duly examined the material submitted by the prosecuting authorities, without specifying the content of the material in question. In particular, the Government failed to specify whether the material submitted by the prosecuting authorities contained witness statements or any other specific information, facts or evidence which would satisfy an objective observer that the applicant may have committed a criminal offence. Moreover, it does not appear from the domestic courts’ decisions ordering and extending the applicant’s pre-trial detention that such information, facts or evidence was ever submitted to the courts, since the domestic courts’ decisions did not refer to this kind of material.

61. In this connection, the Court draws attention to the decision of the Plenum of the Supreme Court of 3 November 2009 which requires the lower courts to subject the prosecuting authorities’ applications for remand in custody to careful scrutiny and to verify if there was a clear suspicion that the accused was involved in the offence by making use of their power under Article 447.5 of the Code of Criminal Procedure to request and review the “initial evidence” in the prosecution’s possession (see paragraph 45 above). However, it was not shown by the Government that in the present case the above mentioned directives had been taken into account by the domestic courts. Therefore, the vague and general references by both the prosecuting authorities and the courts, in their respective documents and decisions, to unspecified “case material”, in the absence of any specific statement, information or concrete complaint, cannot be regarded as sufficient to justify the “reasonableness” of the suspicion on which the applicant’s arrest and detention were based (see *Ilgar Mammadov*, cited above, § 97). For the above reasons, the Court considers that no specific facts or information

giving rise to a suspicion justifying the applicant's arrest were mentioned or produced during the pre-trial proceedings.

62. The Court is mindful of the fact that the applicant's case went to trial. That, however, does not affect the Court's findings in connection with the present complaint, in which it is called upon to examine whether the deprivation of the applicant's liberty during the pre-trial period was justified on the basis of the information or facts available at the relevant time. In this respect, having regard to the above analysis, the Court finds that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention. Accordingly, it has not been demonstrated in a satisfactory manner that, during the period under the Court's consideration in the present case, the applicant was deprived of his liberty on a "reasonable suspicion" of having committed a criminal offence.

63. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

64. Having regard to the above finding, the Court does not consider it necessary to examine separately under Article 5 § 3 of the Convention whether the domestic authorities provided relevant and sufficient reasons justifying the necessity of the applicant's continued pre-trial detention (see *Lukanov v. Bulgaria*, 20 March 1997, § 45, *Reports of Judgments and Decisions* 1997-II, and *Ilgar Mammadov*, cited above, § 102).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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."

A. Damage

1. Pecuniary damage

66. The applicant claimed 8,500 euros (EUR) in respect of pecuniary damage, noting that his family had spent that sum on sending food to him in prison. Moreover, his family had regularly visited him in prison and attended all the court hearings. Lastly, he noted that returning from a court hearing held in Shaki his family had had a road accident as a result of which his wife had undergone numerous surgical operations.

67. The Government asked the Court to reject the claim.

68. The Court does not find any causal link between the damage claimed and the violations found (see *Fatullayev v. Azerbaijan*, no. 40984/07, § 186, 22 April 2010, and *Efendiyev v. Azerbaijan*, no. 27304/07, § 60, 18 December 2014). Accordingly, it rejects the applicant's claims in respect of pecuniary damage.

2. Non-pecuniary damage

69. The applicant claimed EUR 40,000 in respect of non-pecuniary damage.

70. The Government submitted that the applicant's claim was unsubstantiated and excessive.

71. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 20,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

72. The applicant claimed EUR 10,000 for costs and expenses incurred before the domestic courts and the Court. In support of his claim the applicant submitted a contract concluded between him and his lawyer on 11 February 2013.

73. The Government considered that the claim was unsubstantiated and excessive.

74. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 covering costs under all heads.

C. Default interest

75. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 5 § 3 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
 - (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 November 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

András Sajó
President