



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

FIFTH SECTION

CASE OF MAMMADLI v. AZERBAIJAN

(Application no. 47145/14)

JUDGMENT

STRASBOURG

19 April 2018

FINAL

19/07/2018

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

In the case of Mammadli v. Azerbaijan,

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

Angelika Nußberger, *President*,

Erik Møse,

André Potocki,

Yonko Grozev,

Síofra O’Leary,

Gabriele Kucsko-Stadlmayer,

Lətif Hüseynov, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 27 March 2018,

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

PROCEDURE

1. The case originated in an application (no. 47145/14) 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 Anar Asaf oglu Mammadli (*Anar Asəf oğlu Məmmədli* – “the applicant”), on 17 June 2014.

2. The applicant was represented by Mr E. Sadigov and Mr R. Hajili, lawyers 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 had been breached because he had been unlawfully detained in the absence of any reasonable suspicion that he had committed a criminal offence. He also alleged that the domestic courts had failed to justify his pre-trial detention, and that they had not addressed his specific arguments in support of his release.

4. On 3 December 2014 the application was communicated to the Government. It was also decided to grant the application priority treatment under Rule 41 of the Rules of Court. In addition, third-party comments were received from the Council of Europe Commissioner for Human Rights, who exercised his right to intervene in the proceedings and submitted written comments (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). Observations were also received from the Helsinki Foundation for Human Rights, the Human Rights House Foundation, and Freedom Now, organisations which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

5. On 14 June 2016 the Chamber decided, under Rule 54 § 2 (c) of the Rules of Court, to invite the parties to submit further written observations under Article 18 of the Convention taken in conjunction with Article 5.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1978 and lives in Baku.

A. Background

7. The applicant is a well-known civil society activist and human rights defender. He is the Chairman and one of the co-founders of the Election Monitoring and Democracy Studies Centre (*Seçkilərin Monitorinqi və Demokratiyanın Tədrisi Mərkəzi* – “the Centre”), a non-governmental organisation specialising in the monitoring of elections.

8. The applicant has actively taken part in election observation in Azerbaijan. He was also the Chairman and one of the co-founders of the Election Monitoring Centre (*Seçkilərin Monitorinqi Mərkəzi*), a non-governmental organisation specialising in the monitoring of elections which was established on 19 February 2006. Following numerous attempts to acquire status as a legal entity under domestic law, the Election Monitoring Centre was finally registered by the Ministry of Justice on 1 February 2008. However, a few months later, in May 2008, the domestic courts ordered its dissolution at the request of the same ministry. The domestic proceedings relating to the registration and dissolution of the Election Monitoring Centre are the subject of an application pending before the Court (see application no. 64733/09).

9. Following the dissolution of the Election Monitoring Centre, on 1 December 2008 the applicant and some of his colleagues founded the Centre (see paragraph 7 above), which has made several unsuccessful attempts to obtain State registration through applications to the Ministry of Justice. The domestic authorities’ refusal to register the Centre is the subject of another application pending before the Court (see application no. 70981/11).

10. The applicant has been involved in the preparation of various reports relating to the organisation of elections and general human rights situation in Azerbaijan. In particular, he has been a speaker at Council of Europe events and has cooperated with UN institutions.

B. Institution of criminal proceedings against the applicant and his detention pending trial

11. The Centre conducted both short-term and long-term observations of the last presidential elections, held on 9 October 2013, in cooperation with its partner organisation, the Volunteers International Cooperation Public Union (*Könüllülərin Beynəlxalq Əməkdaşlığı İctimai Birliyi* – “the Public Union”) which has been registered as a legal entity by the Ministry of Justice. The Centre’s preliminary report concerning the results of the elections, published on 21 October 2013, concluded that the presidential elections had failed to comply with democratic standards.

12. On 29 October 2013 the Prosecutor General’s Office instituted criminal proceedings in connection with alleged irregularities in the financial activities of the Centre and the Public Union.

13. On 31 October 2013 a search was conducted at the Centre’s office, during the course of which all the organisation’s documents and electronic data storage devices were taken away by the prosecuting authorities.

14. On 16 December 2013 the applicant was arrested and charged under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the Criminal Code. The description of the charges consisted of a single sentence which was one page long. In particular, the applicant was accused of receiving since May 2013, as co-founder and Chairman of the Centre, an “organisation lacking State registration” – with the complicity of S.B. and E.M., through the Public Union, which was a registered NGO – a number of grants, in the amount of 215,287 Azerbaijani manats (AZN) from the United States of America’s National Democratic Institute resulting from certain grant agreements. He was accused of generating profit, “by paying money to himself and other people involved in the projects in the guise of salaries and service fees” despite the fact that the Centre did not have status as a legal entity. It was also stated that “as an official, he had failed to register these grants with the relevant executive authority, even though he had a professional obligation to do so”. Furthermore, he was accused of avoiding payment of taxes under Article 219 of the Tax Code in the amount of AZN 19,535, thus causing “significant damage to State interests protected by law, entailing grave consequences”.

15. On the same day the prosecutor lodged a request with the Nasimi District Court seeking the applicant’s detention pending trial. The prosecutor justified his request by citing the gravity of the charges against the applicant, the fact that he did not live at the address where he was officially registered as a resident, and that there was a risk of his absconding from the investigation and obstructing the investigation’s functioning by influencing other participants in the criminal proceedings. In particular, the fact that the applicant had studied abroad, had frequently travelled to foreign

countries, and was in constant contact with people living abroad constituted grounds for believing there was a risk of his absconding from the investigation.

16. On 16 December 2013 the Nasimi District Court, relying on the official charges brought against the applicant and the prosecutor's request, ordered the applicant's detention for a period of three months. The court cited the gravity of the charges and the risk of re-offending and justified its decision as follows:

"After having examined the request with the material of the case file and having heard the submissions of the investigator and the prosecutor in favour of the request and the submissions of the accused and his representative against the request, the court considers that the request should be granted.

The accused has been charged under Article 308.2 of the Criminal Code of the Republic of Azerbaijan which constitutes a serious crime. The accused Anar Mammadli has also been charged with a criminal offence punishable by more than three years' imprisonment, and there is a strong likelihood that he will re-offend."

17. On 18 December 2013 the applicant appealed against that decision, claiming that his detention was unlawful. He complained, in particular, that there was no "reasonable suspicion" that he had committed a criminal offence and that no proof in this respect had been produced, that he had not been involved in any entrepreneurial activity, and that it was not forbidden by law to receive grants. He also pointed out that he had registered all the grants received with the relevant authorities as required by the domestic law. The applicant also complained that there was no justification for the application of the preventive measure of detention pending trial. He had complied with the investigation's requests all along and that the court had failed to justify his detention pending trial. Moreover, he was unable to obstruct the functioning of the investigation as all the documents relating to his activities had been in the possession of the investigation since the search of the Centre's office on 31 October 2013.

18. On 23 December 2013 the Baku Court of Appeal dismissed the appeal, finding that the first-instance court's decision was lawful. The appellate court was silent as to the applicant's above-mentioned specific complaints and confined itself to noting that the applicant's personal situation – that he had a permanent place of residence, that he was married, that his family was financially dependent on him, and that he had a good reputation – did not constitute grounds for lifting the detention pending trial.

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

19. On 20 December 2013 the applicant lodged a request to be released on bail or placed under house arrest instead of in pre-trial detention, arguing that there was no "reasonable suspicion" that he had committed a criminal

offence. He also claimed that there were no grounds justifying his continued detention. In particular, he had cooperated with the investigation all along and, although he often travelled abroad, he had never intended to abscond from the investigation. The applicant also pointed out that the domestic courts had failed to take into account his personal situation, namely that he had no criminal record, had a permanent place of residence, and that his family were financially dependent on him.

20. On 25 December 2013 the Nasimi District Court dismissed the request, finding that the grounds justifying his detention, as specified in its decision of 16 December 2013, “had not ceased to exist”.

21. On 26 December 2013 the applicant appealed against this decision, reiterating his previous complaints.

22. On 30 December 2013 the Baku Court of Appeal dismissed the appeal and upheld the Nasimi District Court’s decision of 25 December 2013, relying essentially on the same reasoning.

23. Following a request dated 4 March 2014 from the Prosecutor General’s Office for an extension of the period of the applicant’s pre-trial detention, on 6 March 2014 the Nasimi District Court extended the applicant’s detention pending trial by three months, until 16 June 2014. The court justified its decision by citing the complexity of the case and the fact that a number of investigative steps still needed to be carried out, meaning that more time was needed to complete the investigation.

24. On 7 March 2014 the applicant appealed against this decision. He claimed, in particular, that there was no “reasonable suspicion” that he had committed a criminal offence and that the first-instance court had failed to justify the extension of his pre-trial detention.

25. On 14 March 2014 the Baku Court of Appeal dismissed the appeal, upholding the Nasimi District Court’s decision of 6 March 2014. The appellate court provided the same reasoning as the first-instance court.

26. On 19 March 2014 the Prosecutor General’s Office charged the applicant under Articles 179.3.2 (high-level embezzlement) and 313 (forgery in public office) of the Criminal Code, in addition to the original charges under Articles 192.2.2, 213.1 and 308.2 of the Criminal Code. The description of the allegations against him was slightly expanded, but essentially remained the same as that given on 16 December 2013 (see paragraph 14 above), with additional information alleging that the applicant had falsified various pieces of paperwork and minor contracts for services provided by a number of individuals (presumably in connection with various grant projects) and had not paid them in full as stipulated in the contracts.

27. On 31 March 2014 the applicant again lodged a request with the court, asking the substitution of his detention pending trial with either house arrest or release on bail. In support of his request, he reiterated his previous arguments.

28. On 1 April 2014 the Nasimi District Court dismissed the request. The court substantiated its decision by citing the gravity of the criminal charges against the applicant and the risk of his absconding from the investigation and obstructing its functioning.

29. On 7 April 2014 the Baku Court of Appeal upheld the Nasimi District Court's decision of 1 April 2014, providing the same reasoning as the first-instance court.

30. In the meantime, on 5 April 2014 the applicant's case was sent to the Baku Court of Serious Crimes for trial.

31. On 26 May 2014 the Baku Court of Serious Crimes found the applicant guilty on all counts and sentenced him to five and a half years' imprisonment.

32. On 10 December 2014 the Baku Court of Appeal upheld this judgment. It was further upheld on 26 August 2015 by the Supreme Court.

33. Following a presidentially decreed pardon on 17 March 2016, the applicant was released from serving the remainder of his sentence.

D. Public reaction to the applicant's arrest and institution of criminal proceedings against him

34. The applicant's arrest and institution of criminal proceedings against him attracted significant public and media interest both inside the country and internationally. Immediately after his arrest, a number of domestic NGOs, as well as international NGOs such as Amnesty International and Human Rights Watch, condemned the authorities' actions, calling on them to drop "all politically motivated charges against him".

35. On 17 December 2013, Janez Lenarčič, Director of the OSCE Office for Democratic Institutions and Human Rights, expressed his concern over the applicant's arrest. He noted that "the reported arrest of Anar Mammadli is disturbing as it endangers citizen election observation, the role of which in ensuring the integrity of electoral processes has been recognised by all OSCE participating States, including the Republic of Azerbaijan".

36. On 20 December 2013 the Monitoring Committee co-rapporteurs for Azerbaijan of the Parliamentary Assembly of the Council of Europe (PACE) expressed their concern about the arrest and pre-trial detention of the applicant. They stated that they had met him on several occasions during their fact-finding visits to Baku and at the Parliamentary Assembly in Strasbourg, pointing out that "this decision on pre-trial detention may raise suspicions about politically-motivated justice which we denounced in our recent report on the honouring of obligations and commitments by Azerbaijan".

37. On 9 May 2014 Maina Kiai, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Margaret Sekaggya, UN Special Rapporteur on the situation of human rights defenders,

condemned the arrest and criminal prosecution of the applicant. In particular, the UN Special Rapporteurs stated that they were seriously concerned that three human rights defenders, including the applicant, were being prosecuted in retaliation for their legitimate work documenting alleged widespread irregularities and human rights violations around the presidential elections of 9 October 2013. “All charges brought against them should be dropped and Mr. Mammadli should be released immediately”.

E. Statements by public officials and politicians from the ruling party concerning the cases of arrested human rights activists

38. Following the arrest of the applicant and other human rights activists, a number of politicians from the ruling political party made comments about recently arrested NGO activists and human rights defenders in Azerbaijan, describing them as spies or as being a “fifth column” for foreign interests and traitors, without specifically naming the applicant. Some examples of such comments can be found in the Court’s judgment in *Rasul Jafarov v. Azerbaijan* (no. 69981/14, §§ 38-42, 17 March 2016).

II. RELEVANT DOMESTIC LAW AND PRACTICE

39. A detailed description of the relevant provisions of the domestic law concerning the criminal proceedings instituted against the applicant, pre-trial detention and proceedings concerning the application and review of the preventive measure of detention pending trial, and the relevant extracts from the decisions of the Plenum of the Supreme Court can be found in the Court’s judgment in *Rasul Jafarov* (cited above, §§ 50-76 and §§ 79-80).

III. RELEVANT INTERNATIONAL DOCUMENTS

40. The relevant extracts from the Opinions adopted by the European Commission for Democracy Through Law (Venice Commission) with respect to Azerbaijan can be found in the Court’s judgment in *Rasul Jafarov* (cited above, §§ 81-82).

THE LAW

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

41. 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 any “reasonable suspicion” that he had committed a criminal offence. He also 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:

“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

42. The Court notes that this part of the application 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 applicant

43. The applicant submitted that there was no “reasonable suspicion” that he had committed a criminal offence. He noted that although in their observations the Government had referred to “the expert opinions and testimonies” as evidence proving the existence of a “reasonable suspicion”, neither the prosecuting authorities nor the domestic courts had referred to

such evidence when they ordered the applicant's arrest and detention. In this connection, he claimed that he had been arrested and charged because of the Centre's reports on election irregularities in Azerbaijan.

44. The applicant further argued that his detention had not been in compliance with the requirements of Article 5 § 3 of the Convention, because the domestic courts had failed to provide "relevant and sufficient" reasons justifying his pre-trial detention, and had also failed to properly consider whether alternative preventive measures could have been applied.

(b) The Government

45. The Government submitted that the applicant had been arrested on the basis of the investigative measures taken following the institution of criminal proceedings. The investigation was able to collect initial evidence proving the applicant's participation in the misappropriation of a large amount of money and tax evasion in the amount of AZN 19,000 (approximately EUR 17,850 at the material time). That material and information had been further corroborated by the expert opinions and testimonies of other defendants in the criminal case, which had been sufficient to justify the applicant's arrest under domestic law. In this connection, the Government referred to documents, dated 16 December 2013 and 19 March 2014, indicating that various expert opinions had been passed on to the applicant by the investigation. Accordingly, the Government argued that there had been sufficiently specific information to justify a reasonable suspicion that the applicant had committed an offence.

46. The Government also argued that the courts had given relevant and sufficient reasons for their decisions establishing that there had been a risk that, if not detained, the applicant would abscond from the investigation or hinder the proper conduct of the proceedings.

(c) The third parties

47. Third-party comments submitted by the Council of Europe Commissioner for Human Rights, as well as by the Helsinki Foundation for Human Rights, the Human Rights House Foundation and Freedom Now concerned the situation of human rights defenders in Azerbaijan and the difficulties faced by NGOs as a result of the recent legislative amendments. A detailed description of the above-mentioned comments can be found in the Court's judgment in *Rasul Jafarov* (cited above, §§ 99-113).

2. The Court's assessment

(a) General principles

48. Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for deprivation of liberty, which must be interpreted strictly. A person may be detained under Article 5 § 1 (c) only in the context

of criminal proceedings, for the purpose of bringing him before the competent legal authority on “reasonable suspicion” of “having committed an offence” (see *Jėčius v. Lithuania*, no. 34578/97, § 50, ECHR 2000-IX).

49. 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 the suspicions which provided 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).

50. 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 *Gusinskiy v. Russia*, no. 70276/01, § 53, ECHR 2004-IV). 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).

51. When assessing the “reasonableness” of the suspicion, the Court must be in a position 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*).

52. Apart from its factual aspect, which is most often in issue, the existence of such a suspicion additionally requires that the facts relied on can reasonably be considered criminal behaviour under domestic law. Thus, clearly there could not be a “reasonable suspicion” if the acts held against a detained person did not constitute an offence at the time they were committed (see *Wloch v. Poland*, no. 27785/95, §§ 108-09, ECHR 2000-XI).

53. 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 v. Azerbaijan*, no. 15172/13, § 90, 22 May 2014).

(b) Application of those principles to the present case

54. The Court observes that the applicant in the present case complained of the lack of “reasonable” suspicion against him throughout the entire period of his pre-trial detention, including both the initial period following his arrest and the subsequent periods when his remand in custody was authorised and extended by court orders. In this connection, the Court notes at the outset that it has to take into account all the relevant circumstances in order to be satisfied that any objective information existed showing that the suspicion against the applicant was “reasonable”. The Court thus considers it necessary to take into account the general context of the facts of this particular case. Having assessed the submissions by the third parties (see reference in paragraph 47 above) and the opinions of the Venice Commission (see reference in paragraph 40 above), the Court notes that in recent years the legislative environment regarding the operation of non-governmental organisations, including the regulation of matters relating to their State registration, their funding and their reporting requirements, has, according to the submissions of the third parties, deteriorated. A number of amendments to various legislative instruments introduced additional registration and reporting procedures as well as heavy penalties. There have been long-standing problems with the State registration of NGOs in Azerbaijan (in this connection, see also *Ramazanov and Others v. Azerbaijan*, no. 44363/02, 1 February 2007; *Nasibova v. Azerbaijan*, no. 4307/04, 18 October 2007; *Ismayilov v. Azerbaijan*, no. 4439/04, 17 January 2008; and *Aliyev and Others v. Azerbaijan*, no. 28736/05, 18 December 2008, in which cases the Court found violations of Article 11 of the Convention). Despite the reforms to the registration procedures regulated by the Law on State Registration, the Court has continued to receive new applications concerning allegedly arbitrary delays in State registration of NGOs. Indeed, two of those applications were lodged by NGOs founded by the applicant, and have been communicated to the respondent Government (see applications nos. 64733/09 and 70981/11). Furthermore, the above-mentioned sources were of the view that the onerous new regulations, coupled with the reportedly intransigent and arbitrary manner in which they were being applied by the authorities, made it increasingly difficult for NGOs to operate. While the Court is not called upon to give a judicial assessment of the general situation outlined above in

the context of the present complaint, it nevertheless considers that this background information is relevant to the present case and calls for particularly close scrutiny of the facts giving rise to the charges brought against the applicant (see *Rasul Jafarov*, cited above, § 120).

55. The Court further notes 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 *Rasul Jafarov v. Azerbaijan*. In particular, the applicant and Rasul Jafarov were charged with the same criminal offences and there were a lot of similarities in the wording of the prosecuting authorities' decisions describing the acts attributed to them (compare paragraph 14 above and *Rasul Jafarov*, cited above, § 16).

56. The Court observes that the description of the three original charges brought against the applicant on 16 December 2013 lacked the level of coherence, order and clarity that could be expected of a document of this nature. In particular, the description consisted of a single sentence spanning about one page of printed text. It can be discerned from that description that the applicant was accused of having received since May 2013 – with the complicity of S.B. and E.M., through the Public Union, which was a registered NGO – a number of grants allocated to the Centre, which was not State-registered. He was also accused of generating profit, “by paying money to himself and other people involved in the projects in the guise of salaries and service fees” (see paragraph 14 above) despite the fact that the Centre, which was not registered, did not have legal entity status (see reference in paragraph 47 above). He was further accused under Article 219 of the Tax Code of avoiding payment of taxes in the amount of AZN 19,535 (approximately EUR 18,250 at the material time), thus causing “significant damage to State interests protected by law, entailing grave consequences”.

57. It can be deduced from the above that all the misconduct attributed to the applicant essentially stemmed from the fact that he had received the grants awarded to his non-State-registered NGO (the Centre) through a different registered NGO (the Public Union). No other information or evidence supporting the suspicion was shown to exist, either at the time he was accused or throughout the entire period of his pre-trial detention. For the reasons set out below, the Court considers that the above facts relied on by the prosecuting authorities cannot be considered sufficient to satisfy an objective observer that the applicant might have committed the offences he was charged with.

58. The Court notes that the domestic legislation did not prohibit the functioning of non-commercial organisations (such as NGOs), as distinct from commercial organisations, in the absence of State registration (see reference in paragraph 39 above). This has previously been confirmed by the Government in their submissions before the Court in other cases (see *Ramazanova and Others*, cited above, § 48; *Nasibova*, cited above, § 24;

Ismayilov, cited above, § 44; and *Aliyev and Others*, cited above, § 28). However, in practice, NGOs faced difficulties in functioning properly, as they could not, for instance, open bank accounts or receive funding as a legal entity. It was specifically owing to these difficulties that the applicant's organisation conducted the impugned activities in partnership with the Public Union, which was a registered NGO (see reference in paragraph 47 above).

59. In this connection, the Court notes that, although in the present case the criminal charges against the applicant were based on the fact that he had received the grants through a registered NGO, the Court does not see how such an action could have given rise to a reasonable suspicion that he had committed a criminal offence. Neither the domestic authorities nor the Government were able to refer to any provision of the Criminal Code which specifically criminalises the action of receiving grants through a different, State-registered NGO rather than an NGO operating without State registration. Moreover, under domestic law the breach of the legislation on giving and receiving grants constituted an administrative offence punishable by a fine and not a criminal offence (see reference in paragraph 39 above).

60. In any event, the Court observes that the prosecuting authority claimed that the alleged action of receiving grants by the applicant through a registered NGO should result in its categorisation as an illegal commercial ("entrepreneurial") activity. However, the Court notes that the domestic law provided clear definitions of commercial and non-commercial activities, the differentiating factor being whether or not the purpose of the activities was the generation of profit. Non-commercial activity was not subject to profit tax or value-added tax (see reference in paragraph 39 above).

61. The Court also observes that it was undisputed that the grants in question were awarded for the purposes of financing the monitoring of the presidential election of October 2013. The authorities never claimed that the actual purposes for which the grants had been awarded were illegal, or that any of the actual activities conducted by the applicant using grant funds had been illegal. Therefore, the money was received on the basis of grant agreements indicating the specific non-commercial purposes on which the funds were to be spent, as required by the Law on Grants (see reference in paragraph 39 above). Moreover, the donors had never claimed that the money had been spent otherwise than as designated in the relevant agreements. These circumstances favour the presumption that the applicant was engaging in non-commercial activities which were not prohibited by law and were not aimed at generating profit.

62. The Court further notes that the prosecuting authorities never demonstrated the existence of any information or evidence showing that the applicant might have used the money for generating profit or for purposes other than those indicated in the grant agreements, or that the purposes indicated in the grant agreements were both commercial and illegal.

Likewise, the Government failed to demonstrate that any other witness statements, documents or other evidence or information existed which could serve as a basis for the suspicion that the applicant had engaged in criminal activities. In this connection, the Court observes that, although the Government referred to documents, dated 16 December 2013 and 19 March 2014, indicating that various expert opinions had been passed on to the applicant by the investigation, they failed to provide the Court with these expert opinions. In any event, it has not been demonstrated that any such evidence was ever presented by the prosecuting authorities to the domestic courts ordering and extending the applicant's pre-trial detention (compare *Ilgar Mammadov*, cited above, §§ 96-99; *Yagublu v. Azerbaijan*, no. 31709/13, § 60, 5 November 2015; and *Rasul Jafarov*, cited above, § 129). In this regard, the Court also takes note of the decision of the Plenum of the Supreme Court of 3 November 2009. That decision required domestic courts to subject prosecuting authorities' applications for remand in custody to close scrutiny and to verify the existence of a suspicion against the accused by making use of their power under Article 447.5 of the CCrP to request and review the "initial evidence" in the prosecution's possession (see reference in paragraph 39 above). However, in the present case, the above directives were not taken into account (compare *Ilgar Mammadov*, cited above, § 97, and *Yagublu*, cited above, § 61).

63. In such circumstances, the Court finds that the applicant could not have been reasonably suspected of having committed the criminal offence of "illegal entrepreneurship" under Article 192.2.2 of the Criminal Code, because there were no facts, information or evidence showing that he had engaged in commercial activity or committed the offence of "tax evasion" under Article 213 of the Criminal Code, as in the absence of such commercial activity there could be no taxable profit under the simplified regime. Furthermore, the above-mentioned facts were not sufficient to give rise to a suspicion that the applicant had sought to "obtain unlawful advantage for himself or for third parties", which was one of the constituent elements of the criminal offence of "abuse of power" under Article 308 of the Criminal Code (compare, *mutatis mutandis*, *Lukanov v. Bulgaria*, 20 March 1997, § 44, *Reports of Judgments and Decisions* 1997-II).

64. As for the additional charges under Articles 179.3.2 and 313 of the Criminal Code brought against the applicant on 19 March 2014, the Court notes that they were brought after the latest domestic court order of 6 March 2014 extending the applicant's pre-trial detention. All previous decisions ordering and extending the applicant's pre-trial detention had been based solely on the original charges under Articles 192.2.2, 213.1 and 308.2 of the Criminal Code. The new charges were therefore of no significance as regards assessing the reasonableness of the suspicion underpinning the applicant's detention during the period falling within the scope of the

present case. The Government have not argued otherwise (compare *Rasul Jafarov*, cited above, § 131).

65. The Court is mindful of the fact that the applicant's case was taken to trial. That, however, does not affect the Court's findings in connection with the present complaint, where it is called upon to consider 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, during the period the Court is considering in the present case, the applicant was deprived of his liberty in the absence of a "reasonable suspicion" of his having committed a criminal offence.

66. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

67. 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 *Ilgar Mammadov*, cited above, § 102; *Yagublu*, cited above, § 64; and *Rasul Jafarov*, cited above, § 135).

II. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

68. The applicant complained that the domestic courts had not properly assessed the arguments he had put forward in favour of his release. He relied on Article 5 § 4 of the Convention, which provides:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

69. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

70. The applicant reiterated his complaint and maintained that the courts had failed to respond to any of the relevant arguments against detention that he had repeatedly raised before them.

71. The Government submitted that the applicant and his lawyers had been heard by the domestic judges and had been able to put questions to the prosecuting authority during the court hearings. Nothing in the case file indicated that the proceedings had not been adversarial or had been otherwise unfair. Even if the applicant's arguments had not been addressed in a detailed manner in the judicial decisions, the material in the case file, including records of court hearings, showed that the judges had heard the applicant's arguments and had taken the decisions they considered to be the most appropriate in the circumstances.

2. The Court's assessment

72. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review of the procedural and substantive conditions which are essential for the "lawfulness" – in Convention terms – of the deprivation of their liberty. This means that the competent court has to consider not only compliance with the procedural requirements of domestic law, but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Brogan and Others*, cited above, § 65, and *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II (extracts)).

73. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question. Thus, the proceedings must be adversarial and must always ensure "equality of arms" between the parties (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203-04, ECHR 2009, with further references). Furthermore, while Article 5 § 4 of the Convention does not impose an obligation to address every argument contained in a detainee's submissions, the judge considering submissions against pre-trial detention must take into account concrete facts which are referred to by the detainee and are capable of casting doubt on the existence of those conditions essential for the "lawfulness" – for Convention purposes – of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

74. Article 5 § 4 guarantees no right, as such, to an appeal against a court decision ordering or extending detention, and does not compel States to set up a second level of jurisdiction to consider applications for release, but the intervention of a judicial body of at least one level of jurisdiction must comply with the guarantees of Article 5 § 4. Where domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 204, 9 November 2010). In the present case, the issues regarding the ordering and extending of the applicant's detention and his applications for release from detention were decided on each occasion by courts at two levels of jurisdiction, namely the Nasimi District Court as the first-instance court and the Baku Court of Appeal as the appellate court.

75. As the Court has observed above, the domestic courts in the present case consistently failed to verify the reasonableness of the suspicion underpinning the applicant's arrest (see paragraph 62 above). In their decisions, the domestic courts limited themselves to copying the prosecution's written submissions and using short, vague and stereotyped formulae for rejecting the applicant's complaints as unsubstantiated (see paragraphs 15-16, 18, 23 and 25 above). In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution's applications, and they cannot be considered to have conducted a genuine review of the "lawfulness" of the applicant's detention. That is contrary not only to the requirements of Article 5 § 4, but also to those of the domestic law as interpreted and clarified by the Plenum of the Supreme Court (see reference in paragraph 39 above).

76. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was not afforded proper judicial review of the lawfulness of his detention. Accordingly, there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 5 OF THE CONVENTION

77. The applicant complained under Article 18 of the Convention that his Convention rights had been restricted for purposes other than those prescribed in the Convention. Article 18 provides:

"The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

1. *The parties' submissions*

78. In their further observations concerning the complaint under Article 18 of the Convention, dated 16 January 2017, made in reply to those of the applicant, the Government submitted that the applicant had not intended to raise a complaint under Article 18 of the Convention before the Court. In that connection, they noted that the applicant had not raised such a complaint in his initial application lodged with the Court or in his observations submitted in reply to those of the Government following the communication of his application.

79. In the same observations, the Government also submitted that the applicant had failed to exhaust domestic remedies because he had failed to bring the complaint made to the Court before the domestic authorities. In particular, they pointed out that the applicant had never relied on Article 18 of the Convention or similar legal arguments in the proceedings before the domestic courts when he challenged his pre-trial detention.

2. *The Court's assessment*

80. As regards the Government's argument that the applicant did not raise a complaint under Article 18 of the Convention in his application lodged with the Court or in his observations submitted in reply to those of the Government following the communication of his application, the Court notes that in his application lodged with the Court the applicant referred to the political pressure on him because of his electoral monitoring activities. He also explicitly indicated in his observations that his arrest was politically motivated and related to his election monitoring activities. In that connection, the Court notes that it has already found that similar submissions made by an applicant are sufficient reasons to examine the issue of the applicant's detention from the viewpoint of Article 18 (see *Lutsenko v. Ukraine*, no. 6492/11, § 104, 3 July 2012). Therefore, the Court concludes that in the present case the applicant raised in substance the complaint that his arrest and detention had had ulterior motives.

81. Furthermore, under Rule 55 of the Court's Rules, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application. Where an objection of failure to exhaust domestic remedies is raised out of time for the purposes of Rule 55, an estoppel arises and the objection must accordingly be dismissed (see *Stanev v. Bulgaria* [GC], no. 36760/06, § 194, ECHR 2012).

82. In the present case, on the basis of the Chamber's decision of 14 June 2016 (see paragraph 5 above), on 22 June 2016 the Government were invited to submit by 22 September 2016 their written observations

concerning the complaint under Article 18 of the Convention taken in conjunction with Article 5. As the Court did not receive any submission from the Government within the time-limit indicated in the letter of 22 June 2016, the applicant was invited to submit his observations. On 30 November 2016 the applicant submitted his observations which were forwarded to the Government. In their further observations dated 16 January 2017, made in reply to those of the applicant, the Government for the first time adverted to an objection of non-exhaustion of domestic remedies (see paragraph 79 above).

83. However, the Government did not provide any explanation for that delay and the Court finds no exceptional circumstance capable of exempting them from their obligation to raise an objection to admissibility in a timely manner. It follows that the Government are estopped from pleading non-exhaustion of domestic remedies (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 52-53, ECHR 2016 (extracts), and *Boris Kostadinov v. Bulgaria*, no. 61701/11, § 44, 21 January 2016).

84. The Court further considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

85. The applicant maintained that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, his arrest and detention had had the purpose of punishing him as a government critic, silencing him as an election observer, NGO activist and human rights defender, paralysing civil society in the country and destroying the election monitoring network that he had established. In that connection, he submitted that he was the Chairman and one of the co-founders of the main non-governmental organisation specialising in the monitoring of elections in the country which regularly criticised the government for election irregularities. Moreover, various international organisations and instances often relied on the results of the election monitoring conducted by the Centre.

86. The applicant also drew the Court's attention to the fact that criminal proceedings were instituted in connection with alleged irregularities in the financial activities of the Centre only a few days after the issue of the the Centre's preliminary report concerning the results of the last presidential elections.

87. Lastly, the applicant argued that his detention and prosecution could not be viewed in isolation. It was part of a targeted repressive campaign against human rights defenders and NGO activists, who were arrested and detained on the basis of similar fabricated accusations.

(b) The Government

88. The Government argued that, as in the cases of *Khodorkovskiy v. Russia* (no. 5829/04, 31 May 2011) and *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, 25 July 2013), the applicant's allegations in the present case were too wide and far-reaching. He was not complaining of an isolated incident, but was trying to demonstrate that the whole legal machinery of the respondent State had been misused *ab initio*, and that from beginning to end the authorities had been acting in bad faith and with blatant disregard for the Convention. In essence, the applicant was trying to persuade the Court that everything in their case was contrary to the Convention, and that the criminal proceedings against him were therefore invalid. That allegation was a serious one, because it assailed the general presumption of good faith on the part of the public authorities and required particularly weighty evidence in support.

89. However, according to the Government, none of the accusations against the applicant were political. He had not been an opposition leader or a public official. The acts which had been imputed to him did not relate to his participation in political life, real or imaginary – he had been prosecuted for a common criminal offence.

90. The Government also submitted that the Court may be prepared to admit that some political groups or government officials had their own reasons for the applicant's prosecution, but it is not sufficient to conclude that the applicant should not have been convicted otherwise. Elements of "improper motivation" which may exist in the present case do not make the applicant's prosecution illegitimate "from beginning to the end": the fact remains that the accusations against the applicant were serious, that the case against him had a "healthy core", and that even if there was a mixed intent behind his prosecution, this did not grant him immunity from answering the accusations.

91. Lastly, the Government pointed out that the allegation that the applicant had been arrested because of his public statement following the last presidential elections is nothing but speculation. In that connection, they submitted that he had not been arrested immediately after the elections, but following a thorough investigation by the relevant authorities. Accordingly, the restrictions imposed by the State in the present case had not been applied for any purpose other than one envisaged by that provision, and strictly for the proper investigation of serious criminal offences allegedly committed by the applicants.

(c) The third parties

92. Submissions by the third parties, which pertain to both the complaints under Articles 5 and 18 of the Convention, can be found in paragraph 47 above.

2. The Court's assessment

(a) General principles

93. The Court notes that the general principles concerning interpretation and application of Article 18 of the Convention have recently - after the judgments adopted in the cases of *Khodorkovskiy v. Russia* (cited above) and *Khodorkovskiy and Lebedev v. Russia* (cited above) to which the Government referred (see paragraph 88 above) - been set out by the Grand Chamber in its judgment in *Merabishvili v. Georgia* ([GC], no. 72508/13, 28 November 2017):

“287. In a similar way to Article 14, Article 18 of the Convention has no independent existence ... ; it can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that the High Contracting Parties have undertaken to secure to those under their jurisdiction ... This rule derives both from its wording, which complements that of clauses such as, for example, the second sentence of Article 5 § 1 and the second paragraphs of Articles 8 to 11, which permit restrictions to those rights and freedoms, and from its place in the Convention at the end of Section I, which contains the Articles that define and qualify those rights and freedoms.

288. Article 18 does not, however, serve merely to clarify the scope of those restriction clauses. It also expressly prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, and to this extent it is autonomous ... Therefore, as is also the position in regard to Article 14, there can be a breach of Article 18 even if there is no breach of the Article in conjunction with which it applies ...

289. Lastly, being aware – as already highlighted – of a certain inconsistency in its previous judgments regarding the use of the terms “independent” and “autonomous” in these contexts, the Court seizes the opportunity offered by the present case to align the language used in relation to Article 18 to that used in relation to Article 14, as has been done above.

290. It further follows from the terms of Article 18 that a breach can only arise if the right or freedom at issue is subject to restrictions permitted under the Convention ...

291. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case ...”

94. The Grand Chamber further found that a right or freedom is sometimes restricted solely for a purpose which is not prescribed by the Convention. But it is equally possible that a restriction is applied both for an

ulterior purpose and a purpose prescribed by the Convention; in other words, that it pursues a plurality of purposes (see *Merabishvili*, cited above, § 292). In these circumstances, a restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose that is not prescribed by the Convention; in other words, if that other purpose was predominant. Conversely, if the prescribed purpose was the main one, the restriction does not run counter to Article 18 even if it also pursues another purpose (see *Merabishvili*, cited above, § 305). Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (see *Merabishvili*, cited above, § 307).

95. In the latter judgment, after having addressed the question of proof in relation to complaints under Article 18 of the Convention (see *Merabishvili*, cited above, §§ 310-15), the Court found the following concerning the standard of proof:

“316. There is therefore no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations.

317. It must however be emphasised that circumstantial evidence in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts ... Reports or statements by international observers, non-governmental organisations or the media, or the decisions of other national or international courts are often taken into account to, in particular, shed light on the facts, or to corroborate findings made by the Court ...”

(b) Application of those principles to the present case

96. The Court considers it necessary to note at the outset that it has already found that the applicant’s arrest and pre-trial detention were not carried out for a purpose prescribed under Article 5 § 1 (c) of the Convention (see paragraphs 56-66 above), as the charges against him were not based on a “reasonable suspicion” within the meaning of Article 5 § 1 (c) of the Convention (contrast *Merabishvili*, cited above, § 318, *Khodorkovskiy*, cited above, § 258, and compare *Lutsenko*, cited above, § 108; *Ilgar Mammadov*, cited above, § 141; and *Rasul Jafarov*, cited above, § 156). Therefore, the present case should be distinguished from the cases with plurality of purposes in which a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention (see *Merabishvili*, cited above, §§ 318-54).

97. However, the mere fact that the restriction of the applicant’s right to liberty did not pursue a purpose prescribed by Article 5 § 1 (c) is not in

itself a sufficient basis to conduct a separate examination of a complaint under Article 18 unless the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case. Therefore, it remains to be seen whether there is proof that the authorities' actions were actually driven by an ulterior purpose, namely for silencing and punishing the applicant as a civil society activist for his activities in the area of electoral monitoring.

98. In that connection, the Court reiterates that there is no reason for it to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations (see *Merabishvili*, cited above, § 316), as depending on the circumstances of the case, an ulterior purpose cannot always be proven by pointing to a particularly inculpatory piece of evidence which clearly reveals an actual reason (for example, a written document, as in the case of *Gusinskiy*) or a specific isolated incident. In the present case, as in the cases of *Ilgar Mammadov* (cited above) and *Rasul Jafarov* (cited above), the Court considers that it can be established to a sufficient degree that proof of an ulterior purpose derives from a juxtaposition of the lack of suspicion with contextual factors.

99. Firstly, the general circumstances to which it has had regard in connection with its assessment of the complaint under Article 5 § 1 (see paragraph 54 above) are equally relevant in the context of the present complaint. In the Court's view, the general context of the increasingly harsh and restrictive legislative regulation of NGO activity and funding cannot be simply ignored in a case like the present one, where such a situation has led to an NGO activist being prosecuted for an alleged failure to comply with legal formalities of an administrative nature while carrying out his work.

100. Secondly, the Court takes note of the numerous statements by high-ranking officials and articles published in the pro-government media, where local NGOs and their leaders were consistently accused of being a "fifth column" for foreign interests, national traitors, foreign agents, and so on (see reference in paragraph 38 above). They were harshly criticised for contributing to a negative image of the country abroad by reporting on the human rights situation in the country. What was held against them in these statements was not simply an alleged breach of domestic legislation on NGOs and grants, but their activity itself.

101. Thirdly, the applicant's situation cannot be viewed in isolation. Several notable human rights activists who have cooperated with international organisations for the protection of human rights, including, most notably, the Council of Europe, were similarly arrested and charged with serious criminal offences entailing heavy imprisonment sentences. These facts, taken together with the above-mentioned statements by the country's officials, support the applicant's and the third parties' argument that his arrest and detention were part of a larger campaign to crack down

on human rights defenders in Azerbaijan, which had intensified over the summer of 2014 (see reference in paragraph 47 above).

102. The Court also attaches weight to the timing of the institution of criminal proceedings in connection with alleged irregularities in the financial activities of the Centre, only a few days after the issue of the Centre's preliminary report concerning the results of the last presidential elections. In that connection, it cannot accept the Government's submission that there had been no link between the applicant's electoral monitoring activity and his arrest which had been ordered following a thorough investigation by the relevant authorities. The Court has already found that there is nothing in the case file to show that the prosecution authorities had any objective information giving rise to a *bona fide* suspicion against the applicant at the time when they instituted criminal proceedings against him or arrested him. Moreover, the Court cannot overlook the fact that the charges against the applicant specifically referred to the grants received by him since May 2013 (see paragraph 14 above), which were awarded for the purposes of financing the monitoring of the presidential election of October 2013. The Court has also found that there was no evidence and it was not claimed by the donors that the grants in question had been used for any other purpose than the monitoring of the presidential election of October 2013 (see paragraph 61 above).

103. Nor can the Court accept the Government's assertion that the accusations against the applicant could not be politically motivated because he had not been an opposition leader or a public official. It is undisputed that the applicant was a well-known civil society activist and the Chairman of the main non-governmental organisation specialising in the monitoring of elections in the country.

104. The totality of the above-mentioned facts and circumstances indicates that the actual purpose of the impugned measures was to silence and punish the applicant as a civil society activist for his activities in the area of electoral monitoring. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was imposed for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c) of the Convention.

105. The Court considers this a sufficient basis for finding a violation of Article 18 of the Convention, taken in conjunction with Article 5.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

106. 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

107. The applicant claimed 20,000 euros (EUR) in compensation for non-pecuniary damage.

108. The Government submitted that the amount claimed by the applicant was unsubstantiated and excessive. They also submitted that EUR 13,000 would constitute reasonable compensation for the non-pecuniary damage allegedly sustained by the applicant.

109. 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

110. The applicant claimed EUR 5,450 for costs and expenses incurred in the domestic proceedings and before the Court. In support of his claim, the applicant submitted a contract concluded between himself and three lawyers detailing the specific legal services to be provided by his lawyers in the domestic proceedings and before the Court.

111. The Government considered that the amount claimed for costs and expenses incurred before the Court was excessive and asked the Court to apply a strict approach in respect of the applicant’s claims.

112. 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 2,500 covering costs under all heads.

C. Default interest

113. 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 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 5 § 3 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;
5. *Holds* that there has been a violation of Article 18 of the Convention taken in conjunction with Article 5 of the Convention;
6. *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 2,500 (two thousand five hundred 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;
7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President