



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

FIRST SECTION

CASE OF RUSTAMZADE v. AZERBAIJAN (No. 2)

(Application no. 22323/16)

JUDGMENT

Art 6 § 1 (criminal) • Proceedings against civil activist, taken as a whole, not in compliance with fair trial guarantees • Breach of applicant's right to a reasoned judgment

Art 10 • Freedom of expression • No clear and foreseeable basis in domestic law for conviction where specific elements of offences not shown to exist

STRASBOURG

23 February 2023

FINAL

23/05/2023

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

In the case of Rustamzade v. Azerbaijan (No. 2),

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

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Lətif Hüseynov,

Gilberto Felici,

Erik Wennerström, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 22323/16) 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 Ilkin Bakir oglu Rustamzade (*İlkin Bakir oğlu Rüstənzadə* – “the applicant”), on 15 April 2016;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaints concerning Articles 6, 7, 10 and 18 of the Convention and to declare the remainder of the application inadmissible;

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties’ observations;

Having deliberated in private on 31 January 2023,

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

INTRODUCTION

1. The application concerns the criminal conviction of the applicant, a civil society activist, who alleges that his conviction amounted to a breach of his rights protected by Articles 6, 7, 10 and 18 of the Convention.

THE FACTS

2. The applicant was born in 1992 and lives in Baku. He was represented by Mr K. Bagirov and Mr F. Namazli, lawyers based in Azerbaijan.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND INFORMATION

5. The applicant was a student at the Azerbaijan State University of Economics at the time of the events. He was also a civil society activist and

was one of the founders of Free Youth, a non-governmental organisation established in 2011.

6. The background information relating to the applicant's involvement in various demonstrations and events before the institution of criminal proceedings against him is described in *Rustamzade v. Azerbaijan* (no. 38239/16, §§ 7-8, 7 March 2019) as follows:

“7. Following a number of deaths of soldiers in the Azerbaijani army in non-combat situations, from January until March 2013 a number of demonstrations were held in Baku in protest against the deaths of soldiers in the army. The demonstrations received wide media coverage and drew the public's attention to the deaths of soldiers in the army for which the government were harshly criticised. The demonstrations were organised through social media and the information about them was disseminated through social media and the press. The applicant actively participated in those demonstrations and in their organisation. The NIDA civic movement, a non-governmental organisation established by a group of young people, played a key role in the organisation and conduct of the above-mentioned demonstrations. Although the demonstrations were peaceful, the police dispersed those who had gathered and a number of demonstrators were arrested (see, for example among many other cases, *Mehtiyev and others v. Azerbaijan*, nos. 20589/13 and 7 others, 6 April 2017; *Bayramov v. Azerbaijan*, nos. 19150/13 and 52022/13, 6 April 2017; and *Hajili and others v. Azerbaijan*, nos. 44699/13 and 2 others, 29 June 2017).

8. At the time of the events the “Harlem Shake” dance became popular in Azerbaijan. A number of video performances of a “Harlem Shake” dance by different groups of people were prepared in Azerbaijan and uploaded to the YouTube video-hosting website. On 1 March 2013 the applicant together with a group of his acquaintances, went to the seaside park in the city centre of Baku, where his acquaintances performed a “Harlem Shake” dance; a video recording of their dance was made. The applicant did not dance and just observed those who were dancing. On an unspecified date the video recording of the dance was uploaded to YouTube. There is no document in the case file indicating that the video recording in question was uploaded to YouTube by the applicant. The video which is still available at the time of the judgment on YouTube lasts around one minute. It represents seven individuals dancing together in a park. In the back of the scene, one person is dancing in a close proximity to a bronze statue, making sexually suggestive movements. On an unspecified date, after the uploading of the video recording to YouTube, a television programme concerning that video was broadcast on a private television channel. The narrated section of the broadcast referred to the people dancing in the video as drug addicts and anarchist members of NIDA, criticising the demonstrations organised in protest against the deaths of soldiers in the army.”

7. In March 2013 criminal proceedings were instituted against some members of NIDA, including four of its board members, who had actively participated in the organisation of the demonstrations in protest against the deaths of soldiers in the army, for illegal possession of explosive substances and devices and illegal possession of narcotic substances. The investigation into the accusations against them was carried out within the framework of criminal case no. 132006017. The circumstances relating to the institution of criminal proceedings against them are described in detail in *Rashad Hasanov and Others v. Azerbaijan* (nos. 48653/13 and 3 others, §§ 5-16, 7 June 2018)

and *Azizov and Novruzlu v. Azerbaijan* (nos. 65583/13 and 70106/13, §§ 4-15, 18 February 2021). The applicant was questioned twice as a witness within the framework of those criminal proceedings prior to his arrest.

II. INSTITUTION OF CRIMINAL PROCEEDINGS AGAINST THE APPLICANT, HIS ARREST AND PRE-TRIAL DETENTION

8. The circumstances relating to the applicant's arrest and the institution of criminal proceedings against him are described in *Rustamzade* (cited above, §§ 11-12) as follows:

“11. On 30 April 2013 the applicant was arrested by the police because of his participation in a gathering in front of the Azerbaijani State Oil Academy. On the same day the Nasimi District Court found the applicant guilty under Article 298.2 (violation of the rule regulating the organisation and holding of gatherings) of the Code of Administrative Offences and sentenced him to fifteen days' administrative arrest. The domestic proceedings concerning the applicant's arrest on 30 April 2013 and subsequent administrative conviction have already been the subject of the judgment in the case of *Mirzayev and others v. Azerbaijan* (nos. 12854/13, 28750/13 and 76329/13, 20 July 2017). In that case, the Court found violations of Articles 11 and 6 §§ 1 and 3 of the Convention in relation to the applicant.

12. Following his release, on 17 May 2013 the applicant was again arrested and charged under Articles 221.2.1 (hooliganism committed by a group of individuals) and 221.2.2 (hooliganism committed by resisting a public official) of the Criminal Code. The description of the charges consisted of a single sentence half a page long. The relevant part of the decision stated:

‘... İlkin Bakir oglu Rustamzade has been charged on the basis of sufficient ... evidence that he engaged in hooliganism by expressing manifest disrespect towards society because on 1 March 2013 in Baku, with a group of individuals, including B.G. and others, with whom he had close ties, at around 3 p.m. in the seaside park, [he] blatantly breached public order by making a video recording of continued and repetitive immoral actions ... in respect of a bronze statue of an old man ... and of intentionally chaotic hand and foot movements (*qərəzli xaotik əl-qol hərəkətləri*) carried out after having stripped to the waist, and [he] manifestly failed to comply with lawful requests [made by] public officials, ... [namely] the security officers of the seaside park department and police officers [and others] that he desist from the above-mentioned actions, [which breached public order; [he] resisted by [insolently refusing] to cease his actions (*müstəsna həyasızlıqla öz hərəkətlərini dayandırmaması ilə müqavimət göstərərək*); [he] prepared video footage amounting to 6.16 megabytes from a video recording depicting actions against the ethical principles of the society in which he lives and on 1 March 2013 widely disseminated it by uploading it to the YouTube website under the title of “Harlem Shake – Park Bulvar” ...

Through these actions, İlkin Bakir oglu Rustamzade committed criminal offences under Articles 221.2.1 and 221.2.2 of the Criminal Code of the Republic of Azerbaijan. ...’

It appears from the documents in the case file that apart from the applicant only one other person (B.G.) dancing in the impugned video was charged with the criminal offence of hooliganism under Article 221 of the Criminal Code. No criminal

proceedings were instituted against other individuals performing in the impugned “Harlem Shake” dance video.”

9. The domestic courts’ decisions relating to the applicant’s pre-trial detention are described in detail in *Rustamzade* (cited above, §§ 14-26).

10. It appears from the documents in the case file that on 13 September 2013 the applicant was additionally charged with new criminal offences under Articles 28 (preparation of a crime), 220.1 (mass disorder) and 228.3 (illegal acquisition, transfer, sale, storage, transportation and carrying of arm, its accessories, supplies, explosive substances and devices by an organised group) of the Criminal Code. The investigator’s decision in this respect was not made available to the Court. It further appears from the documents in the case file that on an unspecified date the investigation into the accusations against the applicant was also added to criminal case no. 132006017.

III. THE APPLICANT’S TRIAL AND CRIMINAL CONVICTION

11. On 10 October 2013 the investigator issued a bill of indictment relating to criminal case no. 132006017 and filed it with the Baku Court of Serious Crimes (“the BCSC”). The bill of indictment concerned eight accused in total, including the applicant. All the accused were members of NIDA except for the applicant. As regards the part of the bill of indictment relating to the accusations against the applicant, it repeated word for word the decision of 17 May 2013 concerning the charges under Articles 221.2.1 and 221.2.2 of the Criminal Code (see paragraph 8 above). As to the charges under Articles 28, 220.1 and 228.3 of the Criminal Code, the relevant part of the bill of indictment consisted of a single sentence which was one page long, drafted in unclear terms and full of disconnected words and expressions. Although it is not possible from the wording of the sentence to clearly understand the charges against the applicant, it appears that he was accused of being part of an organised group (“*mütəşəkkil dəstə*”) with members of NIDA, who were also accused in the same criminal case, in order to organise mass disorder by holding a demonstration in Baku on 10 March 2013, for the purposes of violating political and social stability, paralysing the functioning of the State authorities and breaching public order. He was also accused of involvement, in accordance with a predetermined plan and a distribution of tasks, in (a) the storage of money in the flat of S.N. (a co-accused) for attracting “destructive forces” to participate in mass disorder, (b) the exchange of information and discussions on social media between B.G., S.N. and M.A. (the co-accused) about the use of Molotov cocktails, (c) the spreading of calls for participation in the demonstrations and the making of leaflets in that regard, and (d) the storage of Molotov cocktails in the flats of B.G. and S.N. (the co-accused).

12. It appears from the documents in the case file that during the trial the applicant pleaded not guilty and pointed out that the charges against him were

not clear since he had not committed any criminal offence. He stated that he had created the event on social media concerning the demonstration of 10 March 2013 in protest against the death of soldiers, but had not called for mass disorder or violence. As regards the charges concerning the performance of the “Harlem Shake” dance, he stated that he had not personally performed the dance but had been present during its performance by his acquaintances. In any event, the video-recording and uploading to the Internet of the dance in question could not be considered a criminal offence.

13. On 6 May 2014 the BCSC found the applicant guilty under Articles 28, 220.1, 221.2.1, 221.2.2 and 228.3 of the Criminal Code and sentenced him to eight years’ imprisonment. The part of the judgment concerning the applicant’s conviction reads as follows:

“... referring to the reliable and indisputable evidence collected, which was examined by the court, the court concludes that ... the acts of Ilkin Bakir oglu Rustamzade should be construed as falling under Articles 28, 220.1, 221.2.1, 221.2.2 and 228.3 of the Criminal Code of the Republic of Azerbaijan and each of the accused should be found guilty in relation to the Articles cited in respect of them and should be punished.”

The BCSC also found all the other accused guilty under Articles 28, 220.1 and 228.3 of the Criminal Code and sentenced them to various terms of imprisonment. In that connection, it referred to the facts that Molotov cocktails had been found in the flats of S.N. and B.G., that S.N., B.G. and M.A. had referred in their exchange of messages on social media to the preparation and use of Molotov cocktails in the upcoming demonstrations, and that a witness (A.A.) had stated that he had attended a meeting of NIDA members at which they had discussed the use of violence. However, the judgment does not contain any reasoning as regards the relevance of the above-mentioned facts to the applicant’s case. As to the applicant’s conviction under Articles 221.2.1 and 221.2.2 of the Criminal Code, the judgment simply referred to the video-recording of the dance and the uploading of it to the Internet, without giving any reasoning concerning how the performance, organisation, preparation, video-recording or uploading of the “Harlem Shake” dance could be characterised as hooliganism.

14. The applicant appealed against that judgment, claiming his innocence. In particular, relying on Articles 6, 10 and 11 of the Convention, he argued that he had not committed any criminal act and that the first-instance court had failed to give reasons for its judgment and to provide any evidence concerning his guilt.

15. On 16 December 2014 the Baku Court of Appeal upheld the first-instance court’s judgment, without giving any further reasoning as regards the applicant’s guilt.

16. On 14 May 2015 the applicant lodged a cassation appeal, reiterating his previous complaints and relying on Articles 6, 10 and 11 of the Convention.

17. On 15 October 2015 the Supreme Court upheld the Baku Court of Appeal's judgment of 16 December 2014.

18. On 16 March 2019 the applicant was released from serving the remainder of his sentence after being pardoned by a presidential decree.

IV. FURTHER DEVELOPMENTS

19. The domestic proceedings concerning the applicant's arrest and pre-trial detention have already been the subject of the Court's judgment in *Rustamzade* (cited above). In that judgment, the Court found a breach of Article 5 § 1 of the Convention, concluding that the applicant's deprivation of liberty did not constitute a "lawful detention" effected "on reasonable suspicion" of his having committed an offence (ibid., §§ 44-54).

20. The domestic proceedings concerning the arrest and pre-trial detention of four board members of NIDA have already been the subject of the Court's judgment in *Rashad Hasanov and Others* (cited above). In that judgment, the Court found that the applicants had been deprived of their liberty without a "reasonable suspicion" of having committed a criminal offence in breach of the requirements of Article 5 § 1 of the Convention (ibid., §§ 97-108) and that the restriction of the applicants' liberty had been applied for purposes other than bringing them before a competent legal authority on reasonable suspicion of having committed an offence, constituting a breach of Article 18 of the Convention taken in conjunction with Article 5 of the Convention (ibid., §§ 119-27).

21. The domestic proceedings concerning the arrest and pre-trial detention of two other members of NIDA in the same criminal proceedings have also been the subject of the Court's judgment in *Azizov and Novruzlu* (cited above). In that judgment, the Court found that the authorities had failed to give "relevant" and "sufficient" reasons to justify the need for the extension of the applicants' pre-trial detention in breach of the requirements of Article 5 § 3 of the Convention (ibid., §§ 56-62) and that the ulterior purpose of the restriction of the applicants' liberty resulting in their pre-trial detention constituted the predominant purpose, which was to punish and silence NIDA members for their active involvement in the demonstrations held against the government regarding deaths of soldiers serving in the army, constituting a breach of Article 18 of the Convention taken in conjunction with Article 5 § 3 of the Convention (ibid., §§ 67-80).

22. Moreover, within the framework of the execution of the Court's judgment in *Rashad Hasanov and Others* (cited above), by a decision of 19 November 2021 the Plenum of the Supreme Court quashed the domestic courts' decisions relating to the criminal conviction of four board members of NIDA and discontinued the criminal proceedings against them for failure to prove their guilt.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

23. The relevant provisions of the Criminal Code are described in detail in the Court's judgments in *Rashad Hasanov and Others* (cited above, §§ 72-74) and *Rustamzade* (cited above, §§ 32).

24. The relevant decisions of the Plenum of the Supreme Court and the Constitutional Court are described in detail in the Court's judgment in *Rustamzade* (cited above, §§ 35-36).

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 § 1 OF THE CONVENTION

25. Article 37 § 1 of the Convention provides as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- (a) the applicant does not intend to pursue his application; or
- (b) the matter has been resolved; or
- (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

26. On 19 September 2019 the Government submitted a unilateral declaration with a view to resolving the issues raised by the present application. They requested that the Court strike the application out of its list of cases in accordance with Article 37 of the Convention.

27. The applicant disagreed with the terms of the unilateral declaration, submitting that the application raised serious issues under the Convention.

28. The Court reiterates that it may be appropriate in certain circumstances to strike out an application, or part thereof, under Article 37 § 1 on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on whether the unilateral declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention does not require the Court to continue its examination of the case (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, § 75, ECHR 2003-VI).

29. In that connection, the Court notes that in the present case, although the Government acknowledged in their unilateral declaration that there had been a violation of the applicant's rights protected under the Convention, they did not undertake to reopen the domestic proceedings and ensure that the reopened proceedings met all the requirements of fairness set out in Article 6

of the Convention (contrast *Seydiyev v. Azerbaijan* (dec.), no. 13648/06, 20 May 2010). In this regard, the Court notes that the nature of the alleged violation in the present case is such that it would not be possible to eliminate the effects of the infringement of the applicant's right to a fair trial without reopening the domestic proceedings. Moreover, the Court observes that the domestic law allows the reopening of criminal proceedings in the event of a finding of a violation of the Convention by the Court. However, it appears that there is no provision allowing the reopening of domestic proceedings on account of a decision by the Court to strike a case out of the list (see *Pirali Orujov v. Azerbaijan*, no. 8460/07, § 30, 3 February 2011; *Romić and Others v. Croatia*, nos. 22238/13 and 6 others, §§ 83-87, 14 May 2020; and *Willems and Gorjon v. Belgium*, nos. 74209/16 and 3 others, § 63, 21 September 2021).

30. The Court therefore refuses the Government's request for it to strike the application out of its list of cases under Article 37 § 1 of the Convention, and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

31. The applicant complained under Article 6 of the Convention that the criminal proceedings against him had been unfair since the domestic courts had failed to establish all the elements of the criminal offences of which he had been convicted and to provide reasons for their decisions. He also complained that his conviction had been based on unlawfully obtained evidence and that he had not been able to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him. The relevant part of Article 6 of the Convention reads as follows:

“1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(d) to examine or have examined witnesses against him ...”

A. Admissibility

32. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

33. The applicant maintained his complaints, submitting that the criminal case against him had been fabricated and that he had not committed any of the criminal offences of which he had been convicted. He reiterated that the domestic courts had failed to provide any items of evidence concerning his guilt and to provide reasons for their decisions.

34. The Government submitted that the domestic courts had delivered reasoned judgments and established the applicant's guilt with sufficient clarity. They noted that the criminal proceedings had been fair, that all the relevant evidence had been obtained in accordance with domestic law and that the applicant had been able to obtain the attendance of witnesses and to examine them.

2. The Court's assessment

35. The Court refers to the general principles established in its case-law set out in *Ilgar Mammadov v. Azerbaijan* (no. 2) (no. 919/15, §§ 205-10, 16 November 2017) and *Fatullayev v. Azerbaijan* (no. 2) (no. 32734/11, §§ 76-83, 7 April 2022), which are equally pertinent to the present case.

36. Turning to the particular circumstances of the present case, the Court observes that it has already found in the applicant's previous case concerning his arrest and detention within the framework of the same criminal proceedings that his deprivation of liberty did not constitute a "lawful detention" effected "on reasonable suspicion" of his having committed a criminal offence (see *Rustamzade v. Azerbaijan*, no. 38239/16, §§ 44-54, 7 March 2019). The Court notes that although the legal issues to be examined in the present case under Article 6 of the Convention are different from those already examined under Article 5 of the Convention, both the previous case and the present case concern the same criminal proceedings against the applicant involving the same charges stemming from the same events, and a considerable part of its findings in the previous case are equally pertinent to the present case.

37. In particular, the Court cannot overlook its findings in the previous case that constituent elements of the criminal offence of hooliganism, such as "a grave breach of public order" and "the use of, or the threat to use, violence against citizens, as well as by the destruction or damaging of others' property" defined in the Criminal Code and interpreted by the Plenum of the Supreme Court and the Constitutional Court, did not exist in the applicant's case (see *Rustamzade*, cited above, §§ 51-52). The Court notes that, similarly, neither the domestic courts' decisions ordering and extending the applicant's pre-trial detention nor the domestic courts' decisions convicting the applicant of the criminal offence of hooliganism under Articles 221.2.1 and 221.2.2 of the

Criminal Code contained any reasoning as to how the video-recording of a dance and its subsequent uploading to YouTube could be considered a grave breach of public order which constitutes one of the elements of the criminal offence of hooliganism under domestic law. They also failed to show that the applicant's actions of the video-recording of a dance and its subsequent uploading to YouTube had been accompanied by any use of, or threat to use, violence against citizens or the destruction or damaging of others' property.

38. As to the applicant's conviction under Articles 28, 220.1 and 228.3 of the Criminal Code, the Court observes at the outset that the evidential basis on which the domestic courts found the applicant guilty of the commission of those criminal offences is not at all clear from the domestic courts' decisions. In particular, the Court notes that the applicant was convicted under Article 228.3 of the Criminal Code, together with four board members of NIDA, of unlawfully obtaining the Molotov cocktails and arranging their storage in the flats of S.N. and B.G. In that connection, the Court notes that the domestic courts did not provide any information or evidence in their decisions showing that the applicant had any connection with the Molotov cocktails in question. In particular, the domestic courts remained silent about how and on what evidential basis they reached the conclusion that the applicant and four board members of NIDA had obtained the above-mentioned Molotov cocktails and then arranged their storage in the flats of S.N. and B.G. (compare *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, § 104, 7 June 2018).

39. As regards the applicant's conviction under Articles 28 and 220.1 of the Criminal Code, the domestic courts failed to refer to any information or evidence demonstrating that the applicant had been in any way involved in the preparation of mass disorder. It follows from the domestic courts' decisions that the applicant had not exchanged any messages on social media about the preparation and use of Molotov cocktails in the upcoming demonstrations. As to the statement of witness A.A., who stated that he had attended a meeting of NIDA members at which they had allegedly discussed the use of violence, it is unclear how that statement could be relevant to the applicant's case since A.A. had not identified the applicant as a participant in the alleged meeting and it is undisputed that the applicant was not a member of NIDA. The domestic courts also failed to explain how the creation of the event on social media concerning the demonstration of 10 March 2013 in protest against the death of soldiers, or calls for participation in the demonstrations and the making of leaflets in that regard, could be considered as evidence demonstrating the commission of the criminal offence of the preparation of mass disorder by the applicant.

40. Furthermore, the Court does not lose sight of the fact that although the applicant was convicted of the commission of the criminal offences under Articles 28, 220.1 and 228.3 of the Criminal Code as being a part of a criminal

group, the domestic courts made no mention of the alleged role of the applicant within that criminal group.

41. Lastly, the Court cannot overlook the fact that by a decision of 19 November 2021 the Plenum of the Supreme Court quashed the domestic courts' decisions relating to the criminal conviction of four board members of NIDA, who had been convicted under Articles 28, 220.1 and 228.3 of the Criminal Code in the same criminal proceedings as the applicant (see paragraphs 11 and 13 above), and discontinued the criminal proceedings against them for failure to prove their guilt (see paragraph 22 above).

42. The foregoing considerations are sufficient to enable the Court to conclude that the applicant's right to a reasoned judgment was infringed and that the criminal proceedings against him, taken as a whole, did not comply with the guarantees of a fair trial.

43. There has accordingly been a violation of the applicant's right to a fair trial protected by Article 6 § 1 of the Convention.

44. In view of the above findings, the Court considers that there is no need to examine separately the applicant's complaint that his conviction had been based on unlawfully obtained evidence and that he had not been able to obtain the attendance of witnesses on his behalf under the same conditions as witnesses against him.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

45. The applicant complained that his criminal conviction for hooliganism had amounted to a violation of his right to freedom of expression as provided in Article 10 of the Convention, which reads as follows:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

A. Admissibility

46. The Government submitted that the applicant had failed to exhaust domestic remedies, in that he had not complained of the alleged violation of his right to freedom of expression before the domestic courts.

47. The applicant contested the Government's submissions and referred to the texts of his appeals lodged with the Baku Court of Appeal and the Supreme Court.

48. The Court observes that although the Government submitted that the applicant had not complained of the alleged violation of his freedom of expression before the domestic courts, it is clear from the documents in the case file that the applicant expressly raised that complaint in his appeals before the relevant courts relying on Article 10 of the Convention (see paragraphs 14 and 16 above). The Court therefore considers that the Government's objection should be dismissed.

49. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

50. The applicant maintained his complaint. In particular, he submitted that his criminal conviction for filming a group of individuals performing a "Harlem Shake" dance and its subsequent uploading to the Internet constituted an interference with the exercise of his freedom of expression which was not prescribed by law.

51. The Government did not make any submissions.

2. The Court's assessment

(a) Whether there was an interference

52. The Court observes at the outset that in the criminal proceedings the applicant was found guilty of hooliganism as provided for by Articles 221.2.1 and 221.2.2 of the Criminal Code, on the grounds that he had filmed a group of individuals performing a "Harlem Shake" dance and subsequently uploaded a video-recording of it to the Internet.

53. In that connection, the Court reiterates that owing to its accessibility and capacity to store and communicate vast amounts of information, the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information. The Internet provides essential tools for participation in activities and discussions concerning political issues and issues of general interest, enhances the public's access to news, and facilitates the dissemination of information in general. Article 10 of the Convention guarantees "everyone" the freedom to receive and impart information and ideas (see *Kilin v. Russia*, no. 10271/12, § 54, 11 May 2021). The Court has also established that Article 10 applies not only to the content of information but also to the means of dissemination, since any restriction imposed on the latter necessarily interferes with the right

to receive and impart information (see, *inter alia*, *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 50, ECHR 2012, and *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 87, 20 January 2020).

54. In these circumstances, the Court cannot but conclude that the applicant's criminal conviction amounted to an interference with the exercise of his right to freedom of expression, as guaranteed by Article 10 of the Convention.

(b) Whether the interference was justified

55. Such an interference will constitute a breach of Article 10 unless it was "prescribed by law", pursued one or more legitimate aims under paragraph 2, and was "necessary in a democratic society" for the achievement of such an aim (see *Perinçek v. Switzerland* [GC], no. 27510/08, § 124, ECHR 2015 (extracts)).

56. As regards the issue whether the interference was "prescribed by law", the Court notes that it has already found that the domestic courts' decisions ordering and extending the applicant's pre-trial detention and subsequently convicting him of the criminal offence of hooliganism under Articles 221.2.1 and 221.2.2 of the Criminal Code failed to establish the existence in the applicant's case of constituent elements of the criminal offence of hooliganism as defined in the Criminal Code and interpreted by the Plenum of the Supreme Court and the Constitutional Court (see *Rustamzade*, cited above, §§ 51 and 52, and paragraph 37 above).

57. In particular, the Court reiterates that the text of Article 221 of the Criminal Code, as worded at the material time, clearly defined the criminal offence of hooliganism as intentional actions gravely breaching public order and expressing a manifest disrespect towards society, accompanied by the use of, or the threat to use, violence against citizens, as well as by the destruction or damage of others' property (see paragraph 23 above). However, the Court sees no indication, contrary to the domestic courts' decisions, that demonstrates that the applicant's impugned conduct constituted "a grave breach of public order" accompanied "by the use of, or the threat to use, violence against citizens, as well as by the destruction or damage of others' property".

58. In view of the foregoing the Court concludes that the specific elements of the criminal offences under Articles 221.2.1 and 221.2.2 of the Criminal Code have not been shown to exist in the particular circumstances of the present case. Therefore, the applicant's criminal conviction under those provisions cannot be said to have had a clear and foreseeable basis in domestic law (compare *Karuyev v. Russia*, no. 4161/13, § 24, 18 January 2022).

59. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 10 § 2 (in respect of a "legitimate aim" and the "necessity of the interference") have been complied with.

60. There has accordingly been a violation of Article 10 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

61. The applicant complained under Article 7 of the Convention that he had been convicted of an act which did not constitute a criminal offence under national law at the time when it was committed. Relying on Article 18 of the Convention in conjunction with Articles 6 and 10 of the Convention, the applicant also complained that his Convention rights had been restricted for purposes other than those prescribed in the Convention.

62. Having regard to the conclusions reached above under Articles 6 and 10 of the Convention and the parties' submissions, the Court considers that there is no need to give a separate ruling on the admissibility and merits of these complaints in the present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014, and *Fatullayev (no. 2)*, cited above, § 112).

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 25,000 euros (EUR) in respect of non-pecuniary damage.

65. The Government contested the amount claimed as unsubstantiated and excessive.

66. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations, 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 12,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

67. The applicant claimed EUR 5,000 for legal services incurred before the Court. In support of his claim, he submitted a contract entered into with one of his representatives before the Court, Mr K. Bagirov. The applicant also claimed EUR 1,202 for translation expenses and submitted a contract with a

translator. The applicant asked that the compensation in respect of costs and expenses be paid directly into the bank account of his representative, Mr K. Bagirov.

68. The Government contested the applicant's claims, considering that they were unsubstantiated and excessive. The Government asked the Court to adopt a strict approach and dismiss the applicant's claims under that head.

69. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the amount of work carried out by the applicant's representative, the Court considers it reasonable to award the sum of EUR 2,500 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Articles 6 and 10 of the Convention admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds* that there is no need to examine the admissibility and merits of the remaining complaints;
5. *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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 12,000 (twelve 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, to be paid directly into the bank account of his representative, Mr K. Bagirov;
 - (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;

6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 23 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Marko Bošnjak
President