



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

FIRST SECTION

CASE OF HAJIBEYLI v. AZERBAIJAN

(Application no. 16528/05)

JUDGMENT

STRASBOURG

10 July 2008

FINAL

10/10/2008

This judgment is final but it may be subject to editorial revision. This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Hajibeyli v. Azerbaijan,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 19 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 16528/05) 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 Vagif Mustafa oglu Hajibeyli (*Vaqif Mustafa oğlu Hacıbəyli* – “the applicant”), on 18 April 2005.

2. The applicant was represented by Mrs N. Huseynova, a lawyer practising in Baku. The Azerbaijani Government (“the Government”) were represented by their Agent, Mr C. Asgarov.

3. The applicant alleged, in particular, that the criminal proceedings against him had been unreasonably lengthy, that he had been ill-treated by the police, that his freedom of movement had been restricted, and that he had been persecuted because of his political views.

4. On 26 September 2006 the President of the Chamber decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, the Court decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Baku. The applicant's surname was "Hajiyev" before he formally changed it to "Hajibeyli" on 29 April 2005.

6. The applicant was a politician and a member of the opposition. On 29 April 2000 the Democratic Congress of Azerbaijan, a political block uniting a number of opposition political parties, held a demonstration in Fuzuli Square in Baku. Earlier, the Baku City Executive Authority ("BCEA") had refused to grant authorisation to hold the demonstration in Fuzuli Square, suggesting instead that the demonstration be held in another location further from the city centre. However, contrary to the BCEA's decision, the organisers of the demonstration refused to change their plans and decided to gather their followers in Fuzuli Square.

7. Soon after the start of the demonstration, police units began arriving in the square with the aim of dispersing the crowd. It appears that the police and the crowd engaged in a series of violent clashes. According to the applicant, the police used excessive force. The applicant himself was beaten by the police in the square and taken to a police station.

8. On 30 April 2000 the applicant was charged with the administrative offence of obstructing the police and, on the same day, the Nasimi District Court sentenced him to ten days' "administrative detention" in accordance with Article 174 of the Code of Administrative Offences.

9. At around the same time, the Nasimi and Yasamal District Prosecutor's Offices instituted criminal proceedings in respect of the demonstrators' obstruction of the police. On 2 May 2000 the case was transferred to the Baku City Prosecutor's Office.

10. On 4 May 2000 the Baku City Prosecutor's Office charged the applicant, together with ten other persons, with obstructing state officials by the actual or threatened use of force, an offence under Article 189-1 § 2 of the former Criminal Code, which was in force before 1 September 2000.

11. On the same date the investigator issued an order for the applicant's detention on remand in connection with this criminal charge. Under the former Code of Criminal Procedure such a decision could be taken by an investigator, not a court.

12. On 23 May 2000 the applicant's detention on remand was substituted by a preventive measure prohibiting him from leaving his place of residence. He was therefore released from detention.

13. Between April and June 2000 the investigators interrogated a number of witnesses in connection with the case. It appears that no major investigative acts were carried out subsequently.

14. On 25 January 2001 the Baku City Prosecutor's Office decided to suspend the investigation in the applicant's case because one of the co-accused, S.H., had absconded and he could not be located or his testimony obtained. Moreover, it was noted that at that stage of the investigation a number of other "accomplices to the offence" had not been identified. The prosecutor found that, in the absence of S.H. and other unidentified accomplices, it was not possible to conclude the investigation and give a legal assessment of the acts of the co-accused, including the applicant. Therefore, the prosecutor decided to suspend the investigation until such time as S.H. and other accomplices were found and brought before the investigating authorities.

15. According to the applicant, he was not informed about the decision to suspend the proceedings and he only found out at a later, unspecified, date.

16. On 7 July 2004 the applicant filed a lawsuit with the Sabayil District Court complaining of the unlawfulness of the prosecutor's actions and requesting the court to discontinue the proceedings. He complained that the criminal charges against him were unfounded and based solely on the testimony of police officers. He also complained that his case was still at the preliminary investigation stage despite the fact that the proceedings had been instituted four years earlier. No procedural act had been carried out during that period. He pointed out that he remained under an obligation not to leave his place of residence and, as a result, could not obtain an international passport or travel abroad on personal business.

17. On 23 August 2004 the Sabayil District Court dismissed the applicant's complaint and upheld the prosecutor's decision. In essence, it reiterated the prosecutor's reasons for suspending the proceedings and found them lawful. Its decision was silent as to the applicant's continued inability to leave his place of residence and obtain a passport. On 14 October 2004 the Court of Appeal upheld the Sabayil District Court's decision. Under the domestic rules of criminal procedure, the Court of Appeal was the highest instance for appeals against procedural decisions of investigative authorities.

18. Following requests by the applicant to the Baku City Prosecutor's Office to discontinue the proceedings, on 24 August 2005 the criminal investigation was resumed. On 6 September 2005 the prosecutor decided that the offence with which the applicant was charged under Article 189-1 § 2 of the former Criminal Code was to be recharacterised under Article 315.1 of the new Criminal Code, which had entered into force on 1 September 2000. Accordingly, the prosecutor issued a new indictment under Article 315.1 of the new Criminal Code.

19. On 14 September 2005 the prosecutor of the Baku City Prosecutor's Office discontinued the proceedings in respect of the applicant because, in accordance with Article 44 § 3 of the former Criminal Code, the criminal

charge against him had become time-barred five years after the date of the commission of the alleged offence. The prosecutor noted that, although under the relevant provisions of the new Criminal Code the same charges would have become time-barred only after seven years from the date of the offence, these provisions could not be applied retroactively in the present case as they would aggravate the applicant's position. The prosecutor also lifted the preventive measure prohibiting the applicant from leaving his place of residence.

20. The applicant filed a complaint with the Sabail District Court against the prosecutor's decision of 14 September 2005. He disagreed with the formal ground that had been given for discontinuing the proceedings, claiming that the proceedings should have been discontinued because of the lack of a criminal element in his actions.

21. On 24 October 2005 the Sabail District Court dismissed the applicant's complaint. The applicant appealed. On 13 December 2005 the Court of Appeal upheld the Sabail District Court's decision.

II. RELEVANT DOMESTIC LAW

A. Criminal Codes

22. In accordance with the former Criminal Code of 1960, which was in force before 1 September 2000, the offence of obstructing state officials by the actual or threatened use of force was punishable by imprisonment for a term of up to five years (Article 189-1 § 2 of the former Criminal Code). Charges in respect of offences punishable by imprisonment for a term of up to five years became time-barred five years after the date of their commission (Article 44 § 3 of the former Criminal Code).

23. In accordance with the new Criminal Code of 1 September 2000, a provision of criminal law which aggravates the position of a person who has committed an offence shall have no retroactive effect (Article 10.4).

24. Offences are classified according to four levels of gravity: offences which do not pose a major public threat, less serious crimes, serious crimes, and especially serious crimes (Article 15 of the new Criminal Code). Offences punishable by a prison sentence of more than two years and up to five years are considered as "less serious crimes" (Articles 15.2 and 15.3 of the new Criminal Code). Charges in respect of "less serious crimes" become time-barred seven years after the date of their commission (Article 75.1.2 of the new Criminal Code).

25. The use of violence against, or the violent obstruction of, a state official acting in the course of his or her official duties, or the actual or threatened use of violence against the relatives of a state official is

punishable by imprisonment for a term of up to three years, and accordingly constitutes a “less serious crime” (Article 315.1 of the new Criminal Code).

B. Code of Criminal Procedure

26. In accordance with the Code of Criminal Procedure (“CCrP”) of 1 September 2000, the investigator may suspend criminal proceedings if, *inter alia*, an accused has not been identified or has absconded (Articles 51.1.1, 51.1.3 and 277.1). If the criminal proceedings involve two or more accused persons and if the ground for the suspension of the proceedings does not apply to all of them, the investigator may either sever the relevant part of the proceedings and suspend it or suspend the whole proceedings (Article 53.4).

27. While the proceedings are suspended, the prosecution must carry out all procedural acts which can be carried out in the absence of the accused and take all necessary measures for finding him or her (Articles 53.5 and 277.5). The proceedings remain suspended until such time as the ground for the suspension ceases to exist (Article 53.6). The suspended proceedings must be discontinued when the criminal charges become time-barred, unless the accused is evading prosecution, or is charged with crimes punishable by life imprisonment or other grave crimes, such as crimes against humanity and war crimes (Article 53.7).

28. Article 154 of CCrP provides for ten types of preventive measures, including *inter alia* an obligation not to leave one’s place of residence (Article 154.2.4.). Preventive measures may be imposed by the preliminary investigator, an investigator, a supervising prosecutor or a court (Article 155.1).

29. The obligation not to leave the place of residence is a preventive measure under which the suspect or accused is required to give a written undertaking to remain at the disposal of the prosecuting authority, not to leave his or her place of residence (city, town, village or other type of settlement) without the prosecuting authority’s permission, not to abscond, not to engage in criminal activity, not to impede the investigation or judicial examination of the case, to comply with any summons issued by the prosecuting authorities and courts, and to inform them of any change of address (Article 165.1). The obligation not to leave the place of residence is imposed by the prosecuting authority (Article 165.2).

30. The maximum permitted length of an active pre-trial investigation in respect of a person charged with a “less serious crime” is nine months, including all possible extensions of the initial three-month investigation period (Articles 218.2.2, 218.6.2, 218.7.2, 218.8.2 and 218.10.2).

31. Complaints against the procedural acts and decisions of a prosecuting authority are subject to judicial review by a single judge of the relevant court of first instance (Articles 442.2.2, 442.3 and 449). A further

appeal against a decision of the court of first instance may be lodged with an appellate court (Article 442.4). The decision of the appellate court is final and not subject to further appeal (Articles 453.10 and 454).

C. Other

32. In accordance with section 1 of the Law on the Entry into and Departure from the Country and on Passports of 14 June 1994, the right of a person charged with a criminal offence to leave the country may be temporarily suspended until the end of the criminal proceedings.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

33. The applicant complained that the length of the criminal proceedings had been incompatible with the “reasonable-time” requirement of Article 6 § 1 of the Convention, which reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

34. Relying on Article 2 of Protocol No. 4 to the Convention and Article 8 of the Convention, the applicant also complained that the preventive measure prohibiting him from leaving his place of residence had remained in effect until the proceedings were discontinued. This allegedly had violated his freedom of movement and right to respect for his private life. The Court considers that, in the present case, this complaint does not raise any separate issues under Article 8 of the Convention and more properly falls to be examined under Article 2 of Protocol No. 4, which provides as follows:

“1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.”

A. Admissibility

35. The Government argued that the applicant had not raised these complaints before the domestic courts. They noted that the Convention formed an integral part of the legal system of the Republic of Azerbaijan and that the provisions of the Convention were directly applicable. Therefore, the applicant could have relied on those provisions in the domestic courts and complained of a violation.

36. The applicant disagreed, noting that all the complaints he had raised with the relevant national authorities, including the domestic courts, were, in substance, the same as those lodged with the Court. The rule of exhaustion of domestic remedies did not imply that the applicant should have specifically referred to the Convention provisions in his complaints to the domestic authorities.

37. The Court reiterates that the purpose of the domestic remedies rule in Article 35 § 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right the violations alleged before they are submitted to the Court. However, the only remedies to be exhausted are those that relate to the breaches alleged and that, at the same time, are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that these various conditions are satisfied (see, for example, *Vernillo v. France*, judgment of 20 February 1991, Series A no. 198, pp. 11-12, § 27).

38. The Court emphasises that the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism. This rule is neither absolute nor capable of being applied automatically. For the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, amongst other things, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant (see *Akdivar and Others v. Turkey*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1211, § 69).

39. As to a remedy concerning a complaint about the length of proceedings, the decisive element in assessing its effectiveness is whether the applicant can raise this complaint before the domestic courts by claiming a specific redress; in other words, whether a remedy exists that

could answer his complaints by providing direct and speedy redress, and not merely indirect protection of the rights guaranteed in Article 6 of the Convention. In particular, a remedy of this sort shall be “effective” if it can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays which have already occurred (see *Merit v. Ukraine*, no. 66561/01, § 59, 30 March 2004, with further references).

40. The Court observes that, in the present case, on 7 July 2004 the applicant filed a judicial complaint challenging the prosecutor’s decision to suspend the criminal proceedings. It considers that, among other things, the applicant also complained, in substance, about the length of the criminal proceedings as well as the continued restriction of his freedom of movement. This complaint, however, was rejected by the Sabayil District Court on 23 August 2004 and, subsequently, by the Court of Appeal on 14 October 2004 (see paragraphs 16-17 above).

41. Notwithstanding the above, the Government argued, in very general terms, that “the applicant has not raised similar issues before the domestic courts”. In this connection, the Court reiterates that when a Contracting State seeks to shelter behind the duty to exhaust remedies, it is for the State to establish the existence of available remedies that have not been utilised. However, the short passage cited above from the Government’s observations contained no more than vague assertions; it did not clearly identify the means of redress to which, according to the Government, the applicant had failed to have recourse. It is not for the Court to ascertain what were the particular remedies alluded to (see, *mutatis mutandis*, *Foti and Others v. Italy*, judgment of 10 December 1982, Series A no. 56, p. 17, § 48).

42. Nevertheless, even assuming that the Government had alluded to the possibility of instituting a separate civil action for damages, the Court has doubts as to the effectiveness of such a remedy for the following reasons.

43. At the outset, the Court reiterates that an individual is not required to try more than one avenue of redress when there are several available. It is for the applicant to select the legal remedy that is most appropriate in the circumstances of the case (see, among other authorities, *Airey v. Ireland*, judgment of 9 October 1979, Series A no. 32, p. 12, § 23, and *Boicenco v. Moldova*, no. 41088/05, § 80, 11 July 2006). The Government have not contested the effectiveness of the avenue of redress which the applicant tried in the present case, namely the judicial review of the prosecuting authorities’ procedural actions under Articles 442 and 449 of the CCrP. The Court considers that, having exhausted all the possibilities of appeal available to him in the framework of the criminal proceedings in question, the applicant should not be required to embark on another attempt to obtain redress by bringing a civil action for damages (see, *mutatis mutandis*,

Assenov and Others v. Bulgaria, judgment of 28 October 1998, *Reports* 1998-VIII, p. 3286, § 86).

44. In any event, the Court notes that the Government have not shown whether a separate civil claim for damages was capable of providing the applicant with “direct and speedy redress” in connection with the present complaints (see paragraph 39 above). It considers that this remedy was not capable of expediting the proceedings at issue. Moreover, the Government have not shown that such a claim offered any reasonable prospects of obtaining redress for the delay which had already occurred. Even assuming that the applicant could have obtained compensation for past delay, the Government have failed to show that such proceedings would have been speedier than any other “ordinary” civil suit which could have lasted for years and gone through several levels of jurisdiction (compare with *V.A.M. v. Serbia*, no. 39177/05, § 86, 13 March 2007, and *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 195, ECHR 2006-...).

45. For the above reasons, the Court concludes that the Government have failed to substantiate that the remedy to which they alluded was an effective one which the applicant was required to exhaust. They have also failed to show whether any separate effective remedy existed in respect of the continued restriction of the applicant’s freedom of movement in the context of lengthy criminal proceedings. Therefore, the complaints cannot be rejected for non-exhaustion of domestic remedies.

46. The Court further notes that the complaints are not inadmissible on any other grounds and are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They must therefore be declared admissible.

B. Merits

47. The Government have not made any specific submissions on the merits. The applicant reiterated his complaints.

1. Article 6 § 1 of the Convention

48. The Court observes that the criminal proceedings against the applicant commenced on 4 May 2000 and ended with the decision to discontinue the proceedings on 14 September 2005. Thus, in total, the proceedings lasted more than five years and four months and were discontinued while still at the investigation stage.

49. As the Convention entered into force with respect to Azerbaijan on 15 April 2002, the period to be taken into consideration in the present case amounted to approximately three years and five months in the post-ratification period. Nevertheless, in order to determine the reasonableness of the length of time in question, regard must also be had to the state of affairs that existed at the beginning of the period under

consideration (see, for example, *Proszak v. Poland*, judgment of 16 December 1997, *Reports* 1997-VIII, p. 2772, § 31).

50. The reasonableness of the length of proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities, and what was at stake for the applicant (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II, and *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 19, ECHR 2000-IV).

51. The Court considers that much was at stake for the applicant as he suffered a feeling of uncertainty about his future, bearing in mind that he risked a criminal conviction and was under an obligation not to leave his place of residence. The Court reiterates, in this respect, that an accused in criminal proceedings should be entitled to have his case conducted with special diligence and that, in criminal matters, Article 6 is designed to avoid a person charged remaining too long in a state of uncertainty about the outcome of the proceedings (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

52. Furthermore, the Court considers that, although the proceedings concerned eleven accused in total, the case does not appear to have been particularly complex. Each of the accused, including the applicant, was charged with only one criminal offence. Nor did the Government argue that the case was particularly difficult to determine. In any event, the Court takes the view that an overall period of three years and five months, during which the case remained at the investigation stage after the Convention's entry into force, could not be explained solely by the complexity of the case.

53. The Court also notes that nothing in the facts of the case suggests that the applicant's conduct contributed to delays in the proceedings. As to the conduct of the authorities, it observes that the proceedings were suspended on 25 January 2001, on the ground that the investigation could not be continued in the absence of one of the co-accused, S.H., who had absconded, and of other unidentified "accomplices". The investigation was resumed on 24 August 2005, more than four years later. Of this period more than three years and four months fell within the period after the Convention's entry into force in respect of Azerbaijan. Nothing in the case file indicates that any procedural activities were carried out during this time. No information has been provided by the Government as to whether the prosecution had complied with their duties under Articles 53.5 and 277.5 of the CCrP and taken the necessary measures in order to find S.H. and the other missing persons and thus to eliminate the ground for the continued suspension of the proceedings.

54. In such circumstances, the mere fact that it was not possible to bring S.H. and other unidentified "accomplices" before the domestic courts could

not serve as a plausible explanation for the considerable period of inactivity in the investigation of the case. In this connection, the Court also notes that, in accordance with Article 53.4 of the CCrP, the proceedings against S.H. could have been severed and suspended, while the proceedings against the applicant continued. Neither the domestic authorities (in their respective decisions) nor the Government have advanced any plausible explanation as to the reasons for not choosing this procedural alternative.

55. Moreover, the proceedings against the applicant were continued even after the charges against him had become time-barred. Specifically, the applicant was accused of committing a “less serious crime”, which had allegedly taken place on 29 April 2000. In accordance with the applicable domestic law (Article 44 § 3 of the old Criminal Code), the charges against him had become time-barred five years after the commission of the alleged offence, i.e., on 30 April 2005. Nevertheless, the proceedings were discontinued only on 14 September 2005.

56. Having regard to these considerations, the Court finds that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable-time” requirement. The Government have not put forward any fact or argument capable of persuading it to reach a different conclusion.

57. There has accordingly been a violation of Article 6 § 1.

2. Article 2 of Protocol No. 4 to the Convention

58. The Court notes that, as he was under the obligation not to leave his place of residence, the applicant was free to move only within the confines of the city where he lived and was prohibited from changing his residence or leaving the city without the authorisation of the prosecuting authority. The Court considers that this constituted a restriction on his freedom of movement (see, for example, *Ivanov v. Ukraine*, no. 15007/02, § 85, 7 December 2006). In order to comply with Article 2 of Protocol No. 4, such a restriction should be “in accordance with the law”, pursue one or more of the legitimate aims contemplated in paragraph 3 of the same Article, and be “necessary in a democratic society” (see *Raimondo v. Italy*, judgment of 22 February 1994, Series A no. 281-A, p. 19, § 39).

59. As concerns the period at least up to 30 April 2005 (see paragraph 68 below), the Court is satisfied that the interference was in accordance with the law (Articles 154, 155 and 165 of the CCrP). It also considers that its purpose was to ensure the applicant’s presence at the place where the investigation was being conducted and at the court hearings. Accordingly, the restriction pursued the legitimate aims set out in paragraph 3 of Article 2 of Protocol No. 4, in particular, the prevention of crime and the protection of the rights and freedoms of others. It remains to be determined whether the measure was necessary in a democratic society.

60. The Court observes that the applicant was charged with obstructing the police at an unauthorised demonstration. It is not the Court's task to determine whether, in a case of this type, the obligation not to leave the place of residence was *per se* a proper preventive measure. Under the domestic law, a range of preventive measures could be imposed on a person charged with a criminal offence, with the aim, *inter alia*, of ensuring his or her presence at the place where the investigation was being conducted. It is not in itself questionable that the State may apply various preventive measures restricting the liberty of an accused in order to ensure the efficient conduct of a criminal prosecution; such measures may include deprivation of liberty. An obligation not to leave the area of one's residence is a minimal intrusive measure involving a restriction of one's liberty (see, *mutatis mutandis*, *Nagy v. Hungary* (dec.), no. 6437/02, 6 July 2004).

61. The Court has previously found in a series of cases against Italy that such an obligation imposed on the applicants was disproportionate in cases where the proceedings varied between thirteen years and six months and twenty-four years and five months (see *Goffi v. Italy*, no. 55984/00, § 20, 24 March 2005; *Luordo v. Italy*, no. 32190/96, § 96, ECHR 2003-IX; and *Bassani v. Italy*, no. 47778/99, § 24, 11 December 2003). On the other hand, in cases where this obligation was imposed for periods varying between four years and three months and four years and ten months, the Court, having also had regard to other specific circumstances of each case, did not find the restriction of the applicants' freedom of movement disproportionate (see *Fedorov and Fedorova v. Russia*, no. 31008/02, §§ 42-47, 13 October 2005, and *Antonenkov and Others v. Ukraine*, no. 14183/02, §§ 62-67, 22 November 2005).

62. In the present case, the obligation not to leave his place of residence was imposed on the applicant for a period of approximately five years and four months, out of which approximately three years and five months fall within the Court's competence *ratione temporis*. As can be seen from this calculation, the length of the restriction was shorter than in all the cases cited in the above paragraph.

63. However, the Court considers that, in the present case, the comparative duration of the restriction, in itself, cannot be taken as the sole basis for determining whether a fair balance was struck between the general interest in the proper conduct of the criminal proceedings and the applicant's personal interest in enjoying freedom of movement. This issue must be assessed according to all the special features of the case. The restriction may be justified in a given case only if there are clear indications of a genuine public interest which outweigh the individual's right to freedom of movement.

64. In the present case, while the restriction on the applicant's freedom of movement was imposed as part of the criminal proceedings against him, for the entire duration of the restriction the proceedings remained at the

investigation stage and the case never came to trial. For almost the entire period between the entry into force of the Convention on 15 April 2002 and the lifting of the restriction on 14 September 2005, the criminal investigation remained suspended and no procedural steps were taken.

65. There is no evidence in the case file to support the applicant's assertion that he actually sought to leave his place of residence or, if he did, that he was refused permission to do so by the prosecutor. However, the Court notes that, instead, the applicant attempted to challenge the prolonged application of the preventive measure through the courts. Thus, in July 2004 he complained to the Sabayil District Court that the investigation had been suspended for an unreasonable period and that no procedural steps were being taken. He also briefly but clearly complained that he still remained under the obligation not to leave his place of residence pending the eventual end of the unreasonably lengthy investigation. However, the Sabayil District Court confined itself merely to verifying the lawfulness of the grounds for the suspension of the investigation and failed to examine whether the continued restriction of the applicant's freedom of movement was justified.

66. As the Court has found above, in the present case the criminal proceedings were unreasonably lengthy while the case did not appear to be particularly complex. Whereas the prosecuting authorities failed to make any progress in the investigation for more than five years, it is difficult to see, in the circumstances of the present case, any plausible justification for the continued restriction of the applicant's freedom of movement, especially without any review of the necessity for it either when the investigation was suspended or when the applicant specifically complained of the restriction in July 2004.

67. In view of the above, the Court considers that it was disproportionate to restrict the applicant's freedom of movement for a period of three years and five months after the entry into force of the Convention (and for five years and four months in total), particularly when the investigation had clearly failed to produce any results and the case ended up being discontinued on account of the expiry of the criminal limitation period. Therefore, the Court finds in respect of the restriction in its entirety that a fair balance between the demands of the general interest and the applicant's rights was not achieved.

68. Moreover, it notes that the charges against the applicant became time-barred on 30 April 2005, whereas the preventive measure was not lifted until 14 September 2005. Consequently, it finds in addition to its finding in the previous paragraph that there were no lawful grounds for the continued restriction of the applicant's freedom of movement for approximately four and a half months after 30 April 2005 and that, therefore, the restriction during this period was not "in accordance with the law".

69. Having regard to the above, the Court concludes that there has been a violation of Article 2 of Protocol No. 4 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. Alleged ill-treatment by the police

70. The applicant complained under Article 3 of the Convention that he had been beaten by the police during the demonstration of 29 April 2000 and that, despite the fact that he was seriously injured after the beating, he was kept in detention without adequate medical aid.

71. The Court reiterates that it is only competent to examine complaints of violations of the Convention arising from events that have occurred after the Convention entered into force with respect to the High Contracting Party concerned (see, among other authorities, *Kazimova v. Azerbaijan* (dec.), no. 40378/02, 6 March 2003). The Convention entered into force with respect to Azerbaijan on 15 April 2002. The present complaint relates to the events that occurred before that date.

72. It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. Alleged persecution based on political motives

73. The applicant complained under Articles 10 and 11 of the Convention that the criminal proceedings had been instituted against him only because of his political opinions and his participation in the anti-government demonstration. In addition, relying on Article 14 of the Convention in conjunction with his other complaints he contended that he had been discriminated against on account of his political views.

74. The Government argued that the applicant had not exhausted domestic remedies, because he had not raised these complaints before the domestic courts. The applicant disagreed, claiming that there was no domestic remedy capable of providing redress for the alleged violations of his rights under these Convention provisions.

75. The Court again finds that it is unnecessary to decide whether the applicant has exhausted the domestic remedies in respect of these complaints because, even assuming this to be the case, they are inadmissible for the following reasons.

76. The complaints mainly relate to the events that took place at the time of the applicant's arrest and the institution of criminal proceedings against him in April-May 2000. These events took place prior to the entry into force of the Convention with respect to Azerbaijan on 15 April 2002. Therefore,

in so far as these events are concerned, the complaints are outside the Court's competence *ratione temporis*.

77. As to the part of the complaints relating to the period after 15 April 2002, the Court considers that the applicant has not produced any arguments or evidence that would disclose an appearance of a violation of any of his rights and freedoms under the provisions of the Convention relied on.

78. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. Article 41 of the Convention provides:

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

A. Damage

1. Pecuniary damage

80. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage. He estimated this to be the cost of future medical treatment for the injuries he had sustained as a result of the beating he had received from the police.

81. The Court refers to its above finding that the complaint concerning the alleged ill-treatment by the police was incompatible *ratione temporis* with the provisions of the Convention. Therefore, no award can be made under this head.

2. Non-pecuniary damage

82. The applicant claimed EUR 150,000 in respect of non-pecuniary damage sustained as a result of the unreasonable length of the proceedings and other alleged violations of his rights.

83. The Government argued that this claim was excessive and unjustified.

84. Given the finding that the criminal proceedings in the present case did not comply with the “reasonable-time” requirement and that the applicant's freedom of movement was restricted without a legal basis, the Court considers that the damage sustained by the applicant cannot be compensated for solely by the finding of a violation. Nevertheless, the amount claimed is excessive. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant

the sum of EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

85. The applicant did not submit any claims in respect of costs and expenses. Therefore, there is no call to make an award under this head.

C. Default interest

86. The Court considers it appropriate that the default interest 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 complaints concerning the length of criminal proceedings and the restriction of the applicant's freedom of movement admissible and the remainder of the application inadmissible;
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 2 of Protocol No. 4 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement, plus any tax that may be chargeable on this amount;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Christos Rozakis
President