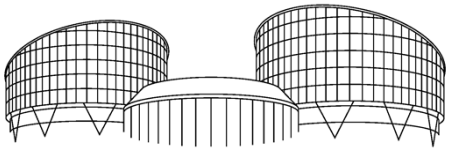

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF ALLAHVERDIYEV v. AZERBAIJAN

*(Application no. 49192/08)*

JUDGMENT

STRASBOURG

6 March 2014

**FINAL**

06/06/2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**In the case of Allahverdiyev v. Azerbaijan,**

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

Elisabeth Steiner, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Ksenija Turković, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 February 2014,

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

# PROCEDURE

1. The case originated in an application (no. 49192/08) 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 Amil Allahverdi oglu Allahverdiyev (*Amil Allahverdi oğlu Allahverdiyev* - "the applicant"), on 2 October 2008.

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

3. The applicant alleged that his right to liberty under Article 5 of the Convention had been breached because he had been detained from 19 July to 29 July 2008 without a court order and the judicial decisions ordering and extending his pre-trial detention had lacked reasonable grounds.

4. On 17 March 2011 the application was communicated to the Government.

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1985 and lives in Baku.

6. He was a student at the Azerbaijan State Oil Academy at the time of the events.

## A. Institution of criminal proceedings against the applicant and his remand in custody

7. On 15 March 2008 the applicant and his girlfriend (A.M.), who was an adult, accompanied by other three persons, travelled by car from Baku to Ganja in order to get married there.

8. On the same day the father of A.M. lodged a complaint with the police alleging that his daughter had been kidnapped.

9. On 16 March 2008 criminal proceedings were instituted on the basis of that complaint under Article 144.2.3 (kidnapping committed by a group of persons) of the Criminal Code.

10. On 16 March 2008 A.M. called her family, informing them that she had gone to Ganja with her boyfriend. On the same day her parents went to Ganja to bring her back to Baku.

11. On 17 March 2008 the applicant returned to Baku. As the police had been to his home several times while he was in Ganja, on 19 March 2008 he went to the police station. The applicant was arrested at the police station and the investigator issued an order for his detention for forty-eight hours as a suspect (*tutma protokolu*).

12. On 21 March 2008 the applicant was formally charged with the criminal offence of kidnapping as provided in Article 144.2.3 of the Criminal Code. On the same date the prosecutor requested the judge to apply the preventive measure of remand in custody (*həbs qətimkan tədbiri*) in respect of the applicant. The prosecutor substantiated the necessity of this measure by the gravity of the applicant's alleged criminal act and the risk of his absconding from and obstructing the investigation.

13. On 21 March 2008 the Narimanov District Court examined the prosecutor's request. At the hearing before the court, the applicant's lawyer asked the judge to apply a non-custodial preventive measure, submitting that the applicant had no criminal record, that he had a permanent place of residence, and that he was young. The judge at the Narimanov District Court, relying on the official charges brought against the applicant and the prosecutor's request for the application of the preventive measure of remand in custody, remanded the applicant in custody for a period of three months. The judge substantiated the necessity for this measure as follows:

> "Taking into account the fact that there is sufficient evidence that Allahverdiyev Amil Allahverdi oglu has committed criminal acts, the gravity and character of the crime, the possibility of his absconding from the investigation, and that there are sufficient grounds [to believe that he might] obstruct the normal functioning of the investigation, I consider it necessary to apply the preventive measure of remand in custody in respect of him."

14. The applicant appealed against the Narimanov District Court's decision of 21 March 2008. He complained that there was no justification for the application of the preventive measure of remand in custody and that

his personal circumstances had not been taken into account when the court had ordered his detention. The applicant submitted in this connection that he had a permanent place of residence, that he had voluntarily presented himself to the police, that he was an internally displaced person, and that his family and financial situation were difficult. The applicant also submitted that his pre-trial detention would violate his right to education, as he would no longer be able to attend courses during his pre-trial detention, which would result in his expulsion from university.

15. On 3 April 2008 the Baku Court of Appeal dismissed the applicant's appeal, finding that the detention order was justified. The relevant part of the court's decision reads as follows:

> "Taking into account the gravity of the act attributed to the accused A. Allahverdiyev, its degree of public dangerousness, the circumstance of its commission, and the fact that the sanction provided for the commission of this act is over two years' imprisonment, the panel of the court considers that the arguments put forward in the appeal lodged by the lawyer are not sufficient for the quashing of the court order."

## B. Extension of the applicant's detention and further developments

16. On 11 June 2008 the investigator in charge of the criminal case asked the prosecutor for an extension of the applicant's pre-trial detention by one month, noting that more time was needed to complete the investigation. The prosecutor lodged a request to that effect with the court.

17. On 14 June 2008 the Narimanov District Court examined the prosecutor's request for the extension of the applicant's detention period. At the hearing, the applicant's lawyer asked the judge to dismiss the prosecutor's request and to impose a less strict preventive measure on the applicant. In this connection, he submitted that the applicant had a permanent place of residence, that there was no risk of his absconding, that he was an internally displaced person, and that he was a student. On the same date the judge extended the applicant's remand in custody by one month, until 19 July 2008. He substantiated the necessity of the extension of the applicant's detention as follows:

> "Taking into account the personality of the accused and the gravity, character, circumstances of the commission and degree of public dangerousness of the act attributed to him, as well as the necessity to carry out various investigative actions, I consider that the request must be granted, as it is justified, and the detention period of the accused Allahverdiyev Amil Allahverdi oglu must be extended."

18. The applicant appealed against that decision, complaining that there was no justification for his continued detention. He asked the court to replace his remand in custody with the preventive measure of police supervision pending trial, an undertaking not to abscond, or house arrest. In support of his request, he pointed out that he was an internally displaced

person, that he had voluntarily presented himself to the police, that he was a student, that he had no criminal record, and that he had a permanent place of residence.

19. On 20 June 2008 the Baku Court of Appeal upheld the Narimanov District Court's decision, finding that the extension of the applicant's pre-trial detention was justified. The court reiterated the first-instance court's findings concerning the nature and gravity of the criminal offence of which the applicant was suspected, and pointed to the possibility of his absconding from and obstructing the investigation. The relevant part of the decision reads as follows:

> "The panel of the court considers that the first-instance court, having taken into account the degree of public dangerousness of the offence of which A. Allahverdiyev was accused, which was a serious crime, the possibility of his absconding from the investigation and influencing persons participating in the criminal proceedings, and of obstructing the normal functioning of the investigation, as well as the necessity to carry out various investigative actions, has correctly extended the period of his detention."

20. On 11 July 2008 the prosecutor in charge of the case filed the indictment with the Assize Court.

21. On 16 July 2008 the applicant wrote to the Ministry of Justice asking to be released from the detention facility on 19 July 2008, the date on which his authorised pre-trial detention was due to expire.

22. On 22 July 2008 the applicant lodged a request with the Prosecutor General complaining that despite the fact that his pre-trial detention period had expired on 19 July 2008 he had not been released from detention.

23. On 29 July 2008 the Assize Court held a preliminary hearing. The applicant complained at the hearing that he had been detained unlawfully since 19 July 2008 and asked the court to replace his remand in custody with another preventive measure. At that hearing the Assize Court rejected the applicant's request and decided that the preventive measure of remand in custody in respect of the applicant should remain "unchanged". The Assize Court further held that, as the indictment had been lodged with the court on 11 July 2008, the applicant's detention since 19 July 2008 had been lawful.

24. The applicant appealed against the Assize Court's decision of 29 July 2008, reiterating his previous complaints.

25. On 7 August 2008 Assize Court refused to admit the applicant's appeal. The court noted that a decision taken at a preliminary hearing was not subject to appeal. Subsequent attempts by the applicant to challenge the decision were unsuccessful.

26. In the meantime, on 30 July 2008 the applicant brought an action against the prison department of the Ministry of Justice. He asked the court to order his release from detention, because the authorised period of pre-trial detention had expired on 19 July 2008.

27. On 11 August 2008 the Azizbayov District Court dismissed the applicant's claim as unsubstantiated. The court found that the Assize Court had upheld the lawfulness of the applicant's remand in custody at its preliminary hearing held on 29 July 2008.

28. On 11 September 2008 the Baku Court of Appeal upheld the decision of 11 August 2008.

29. On 19 March 2009 the Assize Court found the applicant guilty of kidnapping together with a group of persons and sentenced him to two years' imprisonment.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. The Code of Criminal Procedure ("the CCrP")

30. The relevant provisions of the CCrP concerning pre-trial detention and the application of the preventive measure of remand in custody are described in detail in the Court's judgments in *Farhad Aliyev v. Azerbaijan* (no. 37138/06, §§ 83-102, 9 November 2010) and *Muradverdiyev v. Azerbaijan* (no. 16966/06, §§ 35-49, 9 December 2010).

### B. Decisions of the Plenum of the Supreme Court

#### 1. *Decision "on the Application of the Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Case-law of the European Court of Human Rights in the Administration of Justice" of 30 March 2006*

31. The relevant part of this decision reads as follows:

> "13. ... the preventive measure of remand in custody must be considered an exceptional measure to be applied in absolutely necessary cases, where the application of another preventive measure is not possible.
>
> 14. The courts should take into account that persons whose right to liberty has been restricted are entitled in accordance with Article 5 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms to trial within a reasonable time, as well as to release pending trial if it is not necessary to apply the preventive measure of remand in custody in respect of them."

#### 2. *Decision "on the Practice of the Application of the Legislation by the Courts during the Examination of Requests for the Application of the Preventive Measure of Remand in Custody in Respect of an Accused" of 3 November 2009*

32. The relevant part of this decision reads as follows:

> "3. ... when deciding to apply the preventive measure of remand in custody, the courts must not be content with only listing the procedural grounds provided for by

Article 155 of the CCrP, but must verify whether each ground is relevant in respect of the accused and whether it is supported by the materials in the case file. In so doing, the nature and gravity of the offence committed by the accused, information about his personality, age, family situation, occupation, health and other circumstances of that kind must be taken into consideration".

# THE LAW

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

33. By a letter dated 30 September 2011 the Government informed the Court that they wished to make a unilateral declaration with a view to resolving the issues raised by the application in question. In the unilateral declaration the Government stated that the facts of the case were similar to those examined by the Court in the case of *Farhad Aliyev v. Azerbaijan* (no. 37138/06, 9 November 2010), and that they were ready to pay to the applicant *ex gratia* the sum of EUR 4,000. On that basis, the Government invited the Court to strike the application out of its list of cases, in accordance with Article 37 § 1 (c) of the Convention.

34. In a letter of 1 November 2011 the applicant disagreed with the terms of the Government's unilateral declaration, noting that the Government had not acknowledged any violations of Article 5 of the Convention. He also argued that the amount of compensation proposed in the Government's unilateral declaration was too low.

35. The Court reiterates that, under certain circumstances, it may be appropriate to strike out an application under Article 37 § 1 (c) of the Convention on the basis of a unilateral declaration by the respondent Government, even if the applicant wishes the examination of the case to be continued. It will, however, depend on the particular circumstances 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 issue) [GC], no. 26307/95, § 75, ECHR 2003-VI, and *Angelov and Others v. Bulgaria*, no. 43586/04, § 12, 4 November 2010).

36. The Court observes in this connection that the Government have not acknowledged in their unilateral declaration that there has been a violation of the Convention. Submitting that the facts of the present case are similar to those of cases previously examined by the Court cannot, in the Court's view, be considered equivalent to an acknowledgment of a violation of the Convention. Moreover, the proposal of an *ex gratia* payment contained in the unilateral declaration is also incompatible with the notion of the acknowledgement a Convention violation.

37. Thus, having regard to the content of the Government's unilateral declaration, the Court finds that the Government have failed to establish a sufficient basis for finding that respect for human rights as defined in the Convention and its Protocols does not require the Court to continue its examination of the case (compare *Kessler v. Switzerland*, no. 10577/04, § 24, 26 July 2007; *Hakimi v. Belgium*, no. 665/08, § 29, 29 June 2010; and *Pirali Orujov v. Azerbaijan*, no. 8460/07, § 31, 3 February 2011).

38. Therefore, the Court rejects the Government's request for the application to be struck out of the 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 5 § 1 OF THE CONVENTION

39. The applicant complained under Article 5 § 1 of the Convention that his detention from 19 July to 29 July 2008 had been unlawful. The relevant part of Article 5 § 1 of the Convention reads as follows:

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

### A. Admissibility

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

### B. Merits

#### *1. The parties' submissions*

41. The Government did not make any observations on the merits.

42. The applicant reiterated that his detention from 19 July to 29 July 2008 had been unlawful as he had been detained during that period without a court order.

#### *2. The Court's assessment*

43. The Court notes that the period of the applicant's pre-trial detention, authorised most recently by the Narimanov District Court's detention order of 14 June 2008, expired on 19 July 2008. In the meantime, the investigation was completed and the indictment sent to the Assize Court on 11 July 2008. At its preliminary hearing on 29 July 2008 the Assize Court decided that the preventive measure of remand in custody applied in respect

of the applicant should remain "unchanged". Accordingly, during the period from 19 July to 29 July 2008 the applicant was detained without any judicial order authorising his detention.

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

45. The Court further notes that it has already examined an identical complaint in another case against Azerbaijan, in which it concluded that there had been a violation of Article 5 § 1 of the Convention in that the applicant's detention had not been based on a court decision and had therefore been unlawful within the meaning of that provision (see *Farhad Aliyev*, cited above, §§ 174-179). The Court sees no reason to reach a different conclusion in the present case and concludes that the applicant's detention between 19 July and 29 July 2008, which was not based on a court order, was unlawful within the meaning of Article 5 § 1.

46. There has accordingly been a violation of Article 5 § 1 of the Convention.

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

47. The applicant complained under Article 5 of the Convention that the domestic courts had failed to justify the need for his detention and to provide reasons for its continuation. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which provides as follows:

> "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

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

## B. Merits

### *1. The parties' submissions*

49. The Government did not make any observations on the merits.

50. The applicant maintained his complaint. He submitted in this connection that the judicial decisions ordering and extending his pre-trial detention lacked reasonable grounds and that the domestic courts had failed to provide relevant and sufficient reasons for his continued detention.

### *2. The Court's assessment*

51. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 58, ECHR 2003-IX (extracts), and *Khodorkovskiy v. Russia*, no. 5829/04, § 182, 31 May 2011). According to the Court's established case-law, the presumption under Article 5 is in favour of release. The second limb of Article 5 § 3 does not give judicial authorities a choice between bringing an accused to trial within a reasonable time and granting him provisional release pending trial. Until conviction, he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X, and *Bykov v. Russia* [GC], no. 4378/02, § 61, 10 March 2009).

52. The persistence of a reasonable suspicion that the person arrested has committed an offence is a *sine qua non* for the lawfulness of the continued detention, but with the lapse of time this no longer suffices and the Court must then establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also be satisfied that the national authorities displayed "special diligence" in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, § 153, ECHR 2000-IV).

53. The domestic courts must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from

the rule of respect for individual liberty and set them out in their decisions on the applications for release (see *Letellier v. France*, 26 June 1991, § 35, Series A no. 207). Arguments for and against release must not be general or abstract (see *Clooth v. Belgium*, 12 December 1991, § 44, Series A no. 225).

54. The Convention case-law has developed four basic acceptable reasons for detaining a person before judgment when that person is suspected of having committed an offence: the risk that the accused would fail to appear for trial (see *Stögmüller v. Austria*, 10 November 1969, § 15, Series A no. 9); the risk that the accused, if released, would take action to prejudice the administration of justice (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7), or commit further offences (see *Matznetter v. Austria*, 10 November 1969, § 9, Series A no. 10), or cause public disorder (see *Letellier*, cited above, § 51).

55. In this connection, the Court reiterates that, while the severity of the sentence faced is one of the relevant elements in the assessment of the risk of absconding, the gravity of the charges cannot by itself serve to justify long periods of remand in custody (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). Moreover, the risk of absconding, which may justify detention, cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko v. Russia*, no. 45100/98, § 105, 8 February 2005, and *Letellier*, cited above, § 43).

56. Turning to the circumstances of the instant case, the Court observes at the outset that it has already found that some periods of the applicant's detention were not in accordance with Article 5 § 1 of the Convention (see paragraph 45 above). As to the period to be taken into consideration for the purposes of Article 5 § 3, such period begins on the day the accused is taken into custody and ends on "the day when the charge is determined, even if only by a court of first instance" (see *Kalashnikov v. Russia*, no. 47095/99, § 110, ECHR 2002-VI, and *Labita*, cited above, § 147). In the present case this period commenced on 19 March 2008, when the applicant was arrested, and ended on 19 March 2009, when the Assize Court delivered its judgment convicting him. Thus, the applicant's pre-trial detention lasted exactly one year in total.

57. The Court observes that the applicant's detention was ordered for the first time when he was brought before the judge at the Narimanov District Court on 21 March 2008. That decision was upheld by the Baku Court of Appeal on 3 April 2008. The applicant's detention was subsequently extended for a period of one month by the Narimanov District Court's decision of 14 June 2008. That decision was upheld by the Baku Court of Appeal's decision of 20 June 2008.

58. As regards the decisions ordering the application of the preventive measure of remand in custody in respect of the applicant, the Court observes that both the Narimanov District Court and the Baku Court of Appeal used a standard template when ordering the applicant's detention on, respectively, 21 March 2008 and on 3 April 2008. The Court notes in this connection that both the first-instance court and the appellate court limited themselves to repeating a number of grounds for detention in an abstract and stereotyped way, without indicating any reasons why they considered these grounds relevant in respect of the applicant (see paragraphs 13 and 15 above). Moreover, their decisions did not address any of the arguments put forward by the applicant against the application of the preventive measure of remand in custody.

59. As to the decisions concerning the extension of the applicant's detention, the Narimanov District Court and the Baku Court of Appeal again relied on the gravity of the charges against the applicant, and his risk of absconding from or obstructing of the investigation. They also substantiated their decisions by the necessity to carry out various investigative actions (see paragraphs 17 and 19 above).

60. In this connection, the Court reiterates at the outset that grounds such as the need to carry out further investigative measures or the fact that the proceedings have not yet been completed do not correspond to any of the acceptable reasons for detaining a person pending trial under Article 5 § 3 (see *Piruzyan v. Armenia*, no. 33376/07, § 98, 26 June 2012). As to the other grounds on which the domestic courts relied, the Court observes that, like the initial judicial decisions ordering the applicant's pre-trial detention, those judicial decisions did not go any further than listing the above-mentioned grounds, including the gravity of the charges and the risk of absconding and obstruction, using a standard formula paraphrasing the terms of the CCrP (compare *Giorgi Nikolaishvili v. Georgia*, no. 37048/04, §§ 76-79, 13 January 2009, and *Sefilyan v. Armenia*, no. 22491/08, § 89, 2 October 2012). They failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons. The Court also notes that the courts when extending the applicant's detention repeatedly used the same stereotyped formula and their reasoning did not evolve with the passage of time to reflect the developing situation or verify whether these grounds remained valid at the later stages of the proceedings (see *Farhad Aliyev*, cited above, § 191, and *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 92, 6 December 2011).

61. As for the Assize Court's decision of 29 July 2008 which constituted the legal basis for the applicant's detention until 19 March 2009, the Court notes that like the above examined judicial decisions ordering and extending the applicant's pre-trial detention, that decision also failed to give relevant and sufficient reasons for the applicant's continued detention. In particular,

the Assize Court limited itself to hold that the preventive measure of remand in custody in respect of the applicant should remain "unchanged" without specifying concrete grounds for the applicant's detention. The Court reiterates in this connection that court decisions extending detention without any reasoning are contrary to Article 5 of the Convention (compare *Chumakov v. Russia*, no. 41794/04, § 130, 24 April 2012, and *Khudoyorov v. Russia*, no. 6847/02, § 142, ECHR 2005-X (extracts)).

62. Accordingly, the Court notes that the domestic courts used the same standard formula both when ordering the applicant's detention on remand and when extending his detention. They did not even attempt to refute the arguments put forward by the applicant in favour of his release.

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

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

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. Article 41 of the Convention provides:

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

### A. Damage

66. The applicant claimed 25,000 euros (EUR) in compensation for non-pecuniary damage.

67. The Government submitted that the applicant's claim was unsubstantiated and excessive. They considered that, in any event, an award of EUR 2,000 would constitute sufficient just satisfaction.

68. 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 therefore 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 13,000 under this head, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

69. The applicant claimed EUR 3,881 for the legal services provided by two lawyers in the domestic proceedings and in the proceedings before the Court. The applicant further claimed EUR 1,248 for translation expenses and EUR 38 for postal expenses. In support of his claim, the applicant submitted two contracts concluded between him and his two lawyers, an invoice for postal expenses, and a contract concluded with a translator.

70. The Government considered that the claim was unsubstantiated and excessive. In particular, the Government contested the validity of the contracts submitted, noting that they did not contain details of the parties' bank accounts or their taxation identification. The Government further submitted that if the Court were nevertheless to accept the applicant's submissions for costs and expenses, they considered that an award in the amount of EUR 2,000 covering costs under all heads would be appropriate.

71. 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. In the present case, the Court observes that the applicant submitted the relevant contracts in support of his claim and it does not accept the Government's argument that these contracts are not valid because they do not contain information on the parties' bank accounts and taxation identification. However, the Court observes that the translation contract concerns a translation from English into Azerbaijani of the original application drafted in English, and the possible translation of other relevant documents. In this connection, the Court observes that the applicant did not submit any translated documents to the Court. Moreover, the Court does not consider that the translation of the application from English into Azerbaijani was necessary for the proceedings before the Court. Therefore, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,919 covering costs under all heads.

### C. Default interest

72. 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 has been a violation of Article 5 § 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
      (i) EUR 13,000 (thirteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,919 (three thousand nine hundred and nineteen euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Søren Nielsen<br>Registrar | Elisabeth Steiner<br>President |