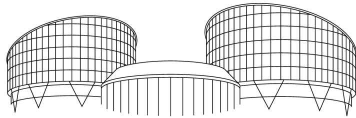

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Criminal proceedings against four opposition activists for allegedly inciting demonstrators to violence were unfair

In today's Chamber judgment in the case **Huseyn and Others v. Azerbaijan** (application nos. 35485/05, 45553/05, 35680/05 and 36085/05), which is not final[1], the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 6 § 1 taken together with **Article 6 § 3 (b), (c) and (d)** (right to a fair trial/right to adequate time and facilities for preparation of defence/right to legal assistance of own choosing/right to obtain attendance and examination of witnesses) and **a violation of Article 6 § 2** (presumption of innocence) of the European Convention on Human Rights.

The case concerned the complaint by four opposition activists about the unfairness of criminal proceedings brought against them for their role in clashes between demonstrators and the police.

Principal facts

The applicants, Panah Chodar oglu Huseyn, Rauf Arif oglu Abbasov, Arif Mustafa oglu Hajili and Sardar Jalal oglu Mammadov are Azerbaijani nationals who were born in 1957, 1966, 1962 and 1957, respectively, and live in Baku. Prominent political activists for the opposition, they all supported the main opposition candidate Isar Gambar in the presidential elections of 2003.

Mr Gambar lost the elections, which took place on 15 October 2003. The same evening, a group of opposition supporters gathered in front of one of the opposition party's headquarters in the centre of Baku, claiming victory for their candidate. The following day, a number of opposition supporters gathered in the city centre again. According to official reports, demonstrators damaged cars, buildings and other public property, and were incited to violence by leaders of the opposition. Riot police and military arrived to disperse the unauthorised demonstration, resulting in violent clashes. According to demonstrators' reports, the police used excessive force indiscriminately against anyone in the area.

Several hundred people were arrested during those events and during the following days, including the four applicants. According to Mr Huseyn, he was repeatedly ill-treated in a detention facility of the Ministry of the Interior's organised crime department, where he was initially kept for four days. Mr Mammadov was also subject to ill-treatment after his arrest.[2] Complaints that he lodged in February 2004 with the

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1 Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

2 His complaints in that respect were the subject of another application, Mammadov v. Azerbaijan (34445/04), Chamber judgment of 11 January 2007.

Prosecutor General’s office and later before the trial court were rejected as unsubstantiated. Following their arrest, three of the applicants were not allowed access to a lawyer for several days.

The applicants were charged with “organising public disorder” and “use of violence against State officials” under the Criminal Code. Following the completion of the pre-trial investigation in March 2004, their lawyers were given little time – one working day in the case of Mr Huseyn’s lawyer and less than 100 hours in the case of Mr Abbasov’s lawyers – to study the case file, which consisted of thousands of pages of documents and a number of videos. The applicants’ case (which also concerned three other people) was split from another criminal case, opened in connection with the demonstrations of October 2003 concerning a large number of people, apparently in order to speed up the proceedings.

During a preliminary hearing in May 2004, the applicants’ lawyers complained to the trial court about an alleged danger to their personal safety, claiming that they had been assaulted by police officers when giving an interview outside the courthouse. It was not clear whether the court took any steps in that respect. The applicants objected to the participation in the trial of two of the judges, pointing out that the son of one of them worked at the Prosecutor General’s office and was subordinate to the head of the investigation team dealing with their case, and that the other judge was the brother of an investigator from the Prosecutor General’s office who, for a few months, had been a member of the investigation team dealing with their case. The court rejected those objections, holding in particular that the latter had only been dealing with the criminal case from which the applicants’ case was split and that he had been removed from the investigation team in January 2004.

During the trial, the applicants further objected to the use as evidence of statements by a number of police officers produced by the prosecution, noting that, according to the records, they had all been taken by the same investigator at the same time and were identical word for word. During a cross examination, the applicants’ lawyers revealed a number of inconsistencies in the police officers’ statements before and during the hearing. When confronted with those inconsistencies, some of the officers retracted or changed part of their testimonies. The court nevertheless admitted those statements and did not address the applicants’ objections later in the judgment. It further admitted testimony from people who had previously been convicted in connection with the demonstration in October 2003, although some of them retracted their pre-trial statements against the applicants, noting that they had been forced to make them under torture or ill-treatment. The court held that those witnesses’ complaints of ill-treatment had been found to be unsubstantiated at their own respective trials and had been relied on as sound evidence. At the same time, the court dismissed testimonies from a number of witnesses in the applicants favour, noting that those witnesses were members or employees of their political parties.

During the proceedings, a number of high-ranking State officials and public authorities, including the Ministry of Internal Affairs and the head of the district police office, made statements in the press in which they denounced the applicants’ political parties and held them responsible for “unlawful” actions.

Invited by the court to deliver a closing address, the lawyers of three of the applicants refused to do so, pointing out, in particular, that they had not been given adequate time to prepare their clients’ defence and had not been given access to some of the prosecution evidence, that they had been put under pressure, including by being physically assaulted, which the court had ignored, and that the outcome of the trial had been predetermined, as the President had publicly declared that the applicants were criminals and would be punished. The court rejected the applicants’ request to be allowed to deliver the closing address themselves, but allowed them to exercise a right

of reply to the prosecution's closing address. When attempting to deliver long reply speeches, they were interrupted and ultimately stopped by the presiding judge, however.

In October 2004, the applicants were convicted as charged. Two of them were sentenced to four years and six months' imprisonment; the other two were sentenced to five years' imprisonment. The judgment was upheld by the court of appeal and, in March 2005, by the Supreme Court. In the same month, all four of them were released from prison, following a presidential pardon decree.

Complaints, procedure and composition of the Court

Relying in particular on Article 6 §§ 1 and 3 (b), (c) and (d), the applicants complained that the criminal proceedings against them had not been fair. Relying on Article 6 § 2, they complained that the public statements made by the State authorities prior to their conviction had infringed their right to the presumption of innocence. Mr Huseyn, Mr Abbasov and Mr Hajili also complained under Article 11 (freedom of assembly and association) that the main motivation behind their criminal conviction was that they were leaders of the opposition who had called for the public to protest against the results of the presidential election. Relying on Article 3 (prohibition of inhuman or degrading treatment), Mr Huseyn further alleged that he had been ill-treated while in police custody; both Mr Huseyn and Mr Abbasov complained under Article 3 about the conditions of their pre-trial detention.

The application was lodged with the European Court of Human Rights on 22 September 2005.

Judgment was given by a Chamber of seven, composed as follows:

Nina **Vajić** (Croatia), *President*,
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
George **Nicolaou** (Cyprus),
Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece)*, Judges*,

and also Søren **Nielsen**, *Section Registrar.*

Decision of the Court

Article 6 §§ 1 and 3

With regard to the applicants' complaints that two of the judges were not impartial, the Court noted that there was insufficient evidence that either of them had displayed personal bias. It had to be determined, however, whether any ascertainable facts might raise doubts as to their impartiality. When it came to the confidence which the courts in a democratic society had to inspire in the public, and most importantly in the accused, even appearances might be of importance.

In the Court's view, the decision to reject the applicants' objection against the judge whose brother was an investigator at the Prosecutor General's office had been overly formalistic. It had ignored the fact that the applicants' case, while having been split from the other case on which the investigator had worked, was merely an offshoot of that case, which dealt with the same events and the same criminal charges. In those circumstances, the Court found that the close family ties between a member of the

prosecution team and the judge sufficed to justify the applicants’ fears of a lack of impartiality. As to the other judge, whose son worked for the Prosecutor General’s office without dealing with the applicants’ case, the Court found that his situation at least compounded those fears, even if, viewed separately, it might have been considered too remote a link to justify fears of a lack of impartiality.

As to the applicants’ legal assistance upon their arrest, the Court noted that three of them had been questioned without a lawyer, and without having expressly waived their right to legal assistance. Such a restriction had clearly infringed their defence rights at the initial stage of the proceedings.

As regards the trial itself, the Court found that the circumstances of the case disclosed serious problems as to the adequacy of the time and facilities afforded to the defense for acquainting themselves with the investigation file in preparation for the applicants’ trial. The Court took into consideration the large volume of evidence and the fact that the applicants and their lawyers had consistently and repeatedly complained before the domestic courts about that issue, which had not been rebutted by any relevant or discernible factual information in the submissions by the Azerbaijani Government.

The applicants’ lawyers’ eventual refusal to give closing addresses clearly resulted in a situation where the applicants were left without any effective legal assistance. The possibility to present their arguments in their reply speech did not make up for that lack, as the Government argued, since only in a closing address was a party supposed to deliver a full overview of its legal and factual assessment of the entire case. The applicants’ speeches had moreover been interrupted and cut short, which showed that the trial court itself did not consider those speeches to be equivalent to a closing address.

Concerning the admission and examination of evidence, the Court noted that the trial court had apparently not addressed the applicants’ objection as to the manner in which the police officers’ testimonies had been taken and as to their content, and had not taken it into account when relying on those witnesses’ testimonies as a basis for the applicants’ conviction. It had thus failed to assess both the question of the admissibility of the testimonies and the credibility of the witnesses who had allegedly signed identical statements. Had the objection been successful, those matters would have been capable of influencing a fair tribunal’s overall assessment as to whether there had been sufficiently strong evidence to prove the applicants guilty. The trial court should further have addressed, but had equally remained silent on, the inconsistencies, pointed out by the defence, between the police officers’ statements before and during the hearing.

The Court was further not convinced by the trial court’s approach of refusing to attach weight to the fact that certain witnesses, who alleged they had been forced to make those statements by means of ill-treatment, retracted their statements. The Court referred in particular to reports from a number of organisatons such as OSCE and Human Rights Watch concerning ill-treatment of detainees in connection with the events of 15-16 October 2003. While the Court was not in a position to accept the information contained in those reports as established proof of ill-treatment of the relevant witnesses, it nevertheless considered that the credibility of the reports and their consistent and detailed nature gave rise to a considerable degree of distrust towards the manner in which the domestic courts dealt with those allegations. In accepting the witnesses’ pre-trial statements as good evidence, the trial court had deprived the applicants of the opportunity of a full and comprehensive assessment of the evidence used against them.

The Court finally considered that none of the defects of the original trial were remedied either by the appeal court or the Supreme Court. Accordingly, there had been a violation of Article 6 § 1 taken together with Article 6 § 3 (b), (c) and (d).

Article 6 § 2

As regards the applicants' complaint that their right to the presumption of innocence had been infringed, the Court noted that the press statements by the Ministry of Internal Affairs had been made in a context independent of the criminal proceedings themselves. However, they had been made at a time when the criminal investigation had just started, specifically mentioning the name of one of the applicants, while it would have been particularly important at that initial stage not to make any public allegations which could have been interpreted as confirming the applicants' guilt.

As to newspaper articles authored by the head of the district police office, it was clear from their content that neither of them had been aimed at informing the public about the criminal investigations in progress. However, seeing that the head of police was a high-ranking functionary of a law-enforcement authority and not a politician, his statements, made in his official capacity, could not have been considered part of a legitimate political debate, which might arguably have allowed a certain degree of exaggeration and liberal use of value judgments with reference to political rivals.

The statements, made without necessary qualifications or reservations, contained wording amounting to an express and unequivocal declaration that the applicants had committed criminal offences. As such, they had prejudged the assessment of the facts by the competent judicial authority. There had accordingly been a violation of Article 6 § 2.

Other articles

In view of its findings under Article 6, which had already covered the applicants' arguments concerning the unfairness of the trial, the Court considered that there was no need for a separate examination of the same arguments under Article 11.

As regards the complaints under Article 3, the Court noted that from the material before it, the allegations made by Mr Huseyn concerning his ill-treatment were not substantiated to a sufficient degree, and the submissions by Mr Huseyn and Mr Abbasov concerning the alleged conditions of their detention did not disclose an appearance of ill-treatment reaching the minimum level of severity required to fall under Article 3. Those parts of the complaint therefore had to be declared inadmissible as manifestly ill-founded.

Article 41

Under Article 41 (just satisfaction) of the Convention, the Court held that Azerbaijan was to pay each applicant 10,000 euros (EUR) in respect of non-pecuniary damage, and EUR 3,200 to Mr Huseyn and Mr Mammadov jointly, EUR 1,500 to Mr Abbasov and EUR 3,000 to Mr Hajili in respect of the costs and expenses (including legal fees).

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.