



## Azerbaijani authorities arrested and detained well-known activist to punish him for his work criticising electoral irregularities

The case [Mammadli v. Azerbaijan](#) (application no. 47145/14) concerned the arrest and detention of a well-known Azerbaijani civil society activist and human rights defender, Anar Asaf oglu Mammadli. He runs several non-governmental organisations involved in election monitoring. He was arrested in December 2013 and held in pre-trial detention until his conviction in May 2014 for a number of offences, including illegal entrepreneurship, tax evasion and abuse of power.

In today's **Chamber** judgment<sup>1</sup> in the case the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 5 § 1 (right to liberty and security)** of the European Convention on Human Rights because the facts relied on by the prosecuting authorities, namely that Mr Mammadli had not complied with legal administrative formalities while carrying out his NGO work, had not been sufficient to suspect him of having committed the offences with which he had been charged. Nor had they provided any other information or evidence which could serve as a basis for the suspicion underpinning his arrest and detention.

**a violation of Article 5 § 4 (right to have lawfulness of detention decided speedily by a court)** of the European Convention because the courts had not carried out a proper judicial review of Mr Mammadli's detention, and

**a violation of Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5**, finding that Mr Mammadli's arrest and detention had not been to bring him before a competent legal authority on reasonable suspicion of having committed an offence, but had been part of a larger campaign to crack down on human rights defenders in Azerbaijan in 2014.

### Principal facts

The applicant, Anar Asaf Oglu Mammadli, is an Azerbaijani national who was born in 1978 and lives in Baku (Azerbaijan). He has founded several non-governmental organisations specialising in the monitoring of elections, which have either been dissolved or which the authorities have refused to register. These NGOs have regularly criticised the Government for election irregularities.

In December 2013, a few months after one of the non-registered NGOs published a report critical of the 2013 presidential elections, Mr Mammadli was arrested and charged with illegal entrepreneurship, large-scale tax evasion and abuse of power. Additional charges were brought against him later on for high-level embezzlement and forgery in public office.

The courts ordered his detention at the request of the prosecuting authorities, citing the gravity of the charges and the risk of his re-offending. Despite his repeated requests to be released on bail or placed under house arrest, this detention was extended, essentially on the same grounds, until May 2014 when he was found guilty on all counts and sentenced to five and a half years' imprisonment.

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](http://www.coe.int/t/dghl/monitoring/execution).

Mr Mammadli's arrest and the criminal proceedings against him were condemned at both domestic and international level, while politicians and public officials from the ruling party in Azerbaijan harshly criticised NGO activists and human rights defenders for contributing to the country's negative image abroad, accusing them of being spies, traitors and foreign agents.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Mammadli complained that he had been arrested and detained without any reasonable suspicion that he had committed a criminal offence and that the courts had not justified the necessity of his continued pre-trial detention. Also relying on Article 5 § 4 (right to have lawfulness of detention decided speedily by a court), he alleged that the courts had failed to take into account his arguments in favour of release, namely that he had no criminal record, had a permanent place of residence and that his family were dependent on him. Lastly, he alleged under Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5 that his arrest and detention had been politically motivated, and had been part of a targeted repressive campaign to silence human rights defenders and NGO activists.

The application was lodged with the European Court of Human Rights on 17 June 2014.

Third-party comments were submitted by the Council of Europe Commissioner for Human Rights, the Helsinki Foundation for Human Rights, the Human Rights House Foundation and Freedom Now.

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

Angelika **Nußberger** (Germany), *President*,  
Erik **Møse** (Norway),  
André **Potocki** (France),  
Yonko **Grozev** (Bulgaria),  
Síofra **O'Leary** (Ireland),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lətif **Hüseynov** (Azerbaijan),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### [Article 5 §§ 1, 3 and 4 \(Mr Mammadli's arrest and detention\)](#)

The Court first pointed to the increasingly difficult context in which NGOs in Azerbaijan have had to operate in recent years, mainly owing to new regulations on their registration.

Owing to those difficulties Mr Mammadli had had to receive grants for his non-registered NGO through a different, registered NGO and it was essentially those activities which were at the heart of the misconduct he had been accused of. There was no other information or evidence supporting the suspicion that he had committed "illegal entrepreneurship", "tax evasion" or "abuse of power".

Yet domestic legislation did not prohibit operating NGOs without State registration. Furthermore, neither the domestic authorities nor the Government had been able to refer to any provision of the Criminal Code which specifically criminalised receiving grants through a different, State-registered NGO. Nor did the authorities ever claim that the actual purpose for which the grants had been awarded, namely financing the monitoring of the 2013 Presidential elections, had been illegal, or that any of the actual activities conducted by Mr Mammadli using the grants had been illegal. Moreover, the donors had never claimed that the money had been spent other than as had been agreed. It could be assumed from this that Mr Mammadli's activities were non-commercial and were

not prohibited by law or aimed at generating profit. In any event, the prosecuting authorities had never provided any evidence to the contrary.

The Court therefore concluded that the facts relied on by the prosecuting authorities had not been sufficient to serve as a basis for the suspicion that Mr Mammadli had committed the three original offences with which he had been charged, as required for an individual's lawful arrest or detention under Article 5 § 1. As for the additional charges, they had been brought against Mr Mammadli after the last court order, in March 2014, extending his pre-trial detention. Accordingly, they were of no significance for the assessment of whether the suspicion against him had been reasonable.

The Court concluded that there had been a violation of Article 5 § 1. In view of that finding the Court considered it unnecessary to examine separately the complaint under Article 5 § 3.

Finally, the Court held that there had been a violation of Article 5 § 4 on account of the lack of an adequate judicial review of the lawfulness of Mr Mammadli's detention. It noted in particular that the domestic courts had essentially automatically endorsed the prosecution's applications to extend his detention, using short and vague formulae for rejecting his complaints about it.

#### Article 18 in conjunction with Article 5 (ulterior motive for Mr Mammadli's arrest and detention)

The Court considered that a combination of factors supported the argument submitted by Mr Mammadli and the third parties that his arrest and detention had been part of a larger campaign to crack down on human rights defenders in Azerbaijan in 2014.

Specifically the Court bore in mind: the general context in which Mr Mammadli had been arrested and detained, namely increasingly harsh and restrictive legislative regulation of NGO activity and funding; the comments by the country's officials about NGOs and their leaders; the fact that several notable human rights activists had similarly been arrested and charged; and, the timing of the criminal proceedings brought against Mr Mammadli, only a few days after his NGO's report on the results of the last presidential elections.

The Court therefore found that the actual purpose of Mr Mammadli's arrest and detention had been to silence and punish him for his activities in the area of electoral monitoring and was not to bring him before a competent legal authority on reasonable suspicion of having committed an offence. There had therefore been a violation of Article 18 in conjunction with Article 5.

#### Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay Mr Mammadli 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 for costs and expenses.

*The judgment is available only in English.*

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