

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

FIRST SECTION

CASE OF ALIYEV v. AZERBAIJAN

(Application no. 36852/11)

JUDGMENT

STRASBOURG

6 June 2024

This judgment is final but it may be subject to editorial revision.



In the case of Aliyev v. Azerbaijan,

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

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Erik Wennerström*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 36852/11) 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") on 25 May 2011 by an Azerbaijani national, Mr Vugar Ibrahim oglu Aliyev (*Vüqar İbrahim oğlu Əliyev* – "the applicant"), who was born in 1981, is serving a life sentence in the Gobustan High Security Prison and was represented by Mr A. Mustafayev, a lawyer based in Azerbaijan;

the decision to give notice of the complaints concerning Article 6 § 1 and Article 13 of the Convention to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 14 May 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged unfairness and excessive length of the criminal proceedings against the applicant in connection with a murder, as well as the alleged lack of a public hearing at the appellate stage of those proceedings.

2. On 9 May 2003 the applicant was arrested and charged with several offences, including the premeditated and aggravated murder of the son of a State official, illegally purchasing an offensive weapon, involving a minor as an accomplice in a crime and theft.

3. On 9 May 2003 the applicant's fiancée, L.G., who was sixteen years old at the material time, was questioned as a witness. In her first statement at the police office, she said that she had planned the murder and stabbed the victim to death herself. She was later arrested as a co-accused of the applicant and charged with premeditated murder. Later, during the pre-trial investigation, she gave a statement incriminating the applicant. She confirmed that statement during a face-to-face confrontation with him.

4. In the proceedings before the Court for Serious Crimes, the applicant claimed that he had not planned the murder and had not stabbed the victim, but had helped his fiancée to remove the traces of the crime after the murder had taken place in his presence. In that connection, he said that he had met

the victim on his fiancée's suggestion to clarify rumours that she had been having an affair with him. During the trial, L.G. retracted her pre-trial statement, complaining in a general manner that she had been coerced at the police office into giving a statement incriminating the applicant.

5. On 22 December 2003 the Court for Serious Crimes found the applicant guilty of premeditated and aggravated murder, involving a minor as an accomplice in a crime, illegally purchasing an offensive weapon, theft and sexual intercourse with a minor. He was sentenced to life imprisonment. The court based its decision on L.G.'s pre-trial statement, the face-to-face confrontation between her and the applicant and expert opinions, which stated that he had a cut on his left hand, that there were traces of the victim's blood on his trousers and that his clothes contained traces of fibres from the victim's clothes.

6. The court also found L.G. guilty of premeditated and aggravated murder and theft and sentenced her to ten years' imprisonment.

7. As to L.G.'s testimony retracting her pre-trial statement, the court concluded that it contradicted the factual circumstances of the case and expert opinions and was aimed at protecting the applicant since it was implausible that she, as a minor at the time of the murder, had been able to inflict multiple injuries on the victim, many of them penetrating, given that he had been physically stronger than her.

8. The applicant appealed, arguing, *inter alia*, that the first-instance court had based its decision on his co-accused's incriminating pre-trial statement instead of her testimony given in court.

9. On 29 January 2004 the Court of Appeal held a preliminary hearing and decided that the trial would be held at Pre-trial Detention Facility No. 1 ("the detention facility"). It gave no reasons for holding the trial outside the regular courtroom.

10. On 6 February 2004 the Court of Appeal held a hearing at the detention facility in camera and upheld the first-instance court's judgment, reiterating its reasoning.

11. On 26 October 2004 the applicant submitted a cassation appeal to the prison administration for referral to the Supreme Court. In addition to his previous complaints, he complained that he had not been given a public hearing before the Court of Appeal.

12. The applicant was served with a notice by the prison administration, informing him that his cassation appeal had been sent to the Supreme Court with an accompanying letter (no. 17/13-1093 of 26 October 2004). However, it appears that the appeal was not actually sent owing to negligence on the part of the prison administration.

13. After discovering that his cassation appeal had not been sent, in November 2007 the applicant lodged it again through his lawyer.

14. By a decision of 22 January 2008 the Supreme Court refused to hear the case on the grounds that the applicant had missed the time-limit for lodging his cassation appeal.

15. The applicant attempted to have the time-limit for lodging a cassation appeal restored. However, by decisions of 17 June 2009, 10 March 2010 and 16 July 2010 the Supreme Court refused to allow his repeated applications.

16. On 8 October 2010 the Plenum of the Supreme Court accepted the applicant's lawyer's "additional" cassation appeal, quashed the Supreme Court's decision of 22 January 2008 and remitted the case for re-examination.

17. On 24 November 2010 the Supreme Court restored the time-limit for lodging a cassation appeal, finding that it had not been received in time because of the prison administration's failure to send it.

18. On 15 December 2010 the Supreme Court dismissed the applicant's cassation appeal as unsubstantiated. It did not, however, address his complaint concerning the lack of a public hearing before the Court of Appeal.

19. The applicant complained under Article 6 § 1 of the Convention that his right to a fair trial had been breached on account of the lack of reasoning in the domestic courts' judgments and their use of unlawfully obtained evidence, that the hearing before the Court of Appeal had been closed to the public, and that the length of the criminal proceedings against him had been incompatible with the "reasonable time" requirement. He also complained under Article 13 of the Convention that he had had no effective domestic remedy at his disposal in respect of his complaint concerning the length of the criminal proceedings.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S OBJECTION CONCERNING THE SIX-MONTH TIME-LIMIT

20. The Government argued that the application had been lodged with the Court outside the six-month time-limit.

21. The Court notes that the Government's objection appears to be based on Rule 47 of the Rules of Court as worded following its amendment, with effect from 1 January 2014 (for further details, see *Zayidov v. Azerbaijan (no. 2)*, no. 5386/10, § 53, 24 March 2022).

22. The applicant's initial letter indicating his wish to lodge an application with the Court was sent on 25 May 2011. Accordingly, it was sent within the six-month time-limit under Article 35 § 1 of the Convention, which had started running on 15 December 2010. On 27 June 2011 the Registry replied to the applicant, inviting him to complete an application form and send it, together with copies of all relevant documents, by 22 August 2011. The completed application form was sent to the Court on 10 August 2011. Accordingly, the applicant complied with the Court's instructions. It follows

that his application was lodged in time, in accordance with the rule applicable at the relevant time (ibid., § 54).

23. For these reasons, the Court rejects the Government's objection regarding the six-month time-limit.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (FAIRNESS OF THE CRIMINAL PROCEEDINGS)

24. The Court refers to the general principles set out in *Huseyn and Others v. Azerbaijan* (nos. 35485/05 and 3 others, §§ 196-203, 26 July 2011), which are equally pertinent to the present case.

25. The Court notes that the domestic courts based the applicant's conviction on L.G.'s pre-trial statement and the face-to-face confrontation between them directly implicating him, as well as on the conclusions of several expert opinions which supported L.G.'s pre-trial statement (see paragraph 5 above).

26. As to the applicant's allegation that L.G. gave the statement against him as a result of coercion, the Court observes that at trial neither the applicant nor L.G. made an arguable claim of ill-treatment during the pre-trial investigation, supported by relevant evidence (contrast *Dursun Aliyev v. Azerbaijan*, no. 20216/14, § 142, 27 April 2023).

27. Nevertheless, the Court reiterates that a higher degree of scrutiny should be applied to the assessment of statements by co-accused, because the position in which the accomplices find themselves while testifying is different from that of ordinary witnesses. They do not testify under oath, that is, without any affirmation of the truth of their statements which could have rendered them punishable for perjury for wilfully making untrue statements (see *Jannatov v. Azerbaijan*, no. 32132/07, § 76, 31 July 2014). Moreover, where doubts arise as to the reliability of a certain source of evidence, the need to corroborate it by evidence from other sources is correspondingly greater (see *Kobiashvili v. Georgia*, no. 36416/06, § 72, 14 March 2019).

28. Having regard to the reasoning of the domestic courts as regards the credibility of L.G.'s pre-trial statement (see paragraph 7 above), the Court considers that they took note of her retraction of that statement and adequately assessed her conflicting statements, basing their judgments on what was corroborated by other evidence (see paragraph 5 above).

29. Furthermore, there is no basis for concluding that the applicant, who took part in the trial personally and was also represented by a lawyer, was in any way restricted in adopting a defence strategy or in his rights to state his case, question witnesses or challenge the evidence concerning any part of the case during the trial (compare *Dadashbeyli v. Azerbaijan* [Committee], no. 11297/09, § 39, 3 December 2020).

30. Having regard to all the evidence in its possession, the Court does not find any appearance of a violation as regards the fairness of the proceedings

under Article 6 § 1 of the Convention. It follows that this complaint must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (PUBLIC HEARING)

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

32. The general principles concerning the right to a public hearing have been summarised in *Hummatov v. Azerbaijan* (nos. 9852/03 and 13413/04, §§ 140-41 and 144, 29 November 2007).

33. Turning to the present case, the Court observes that the Court of Appeal, a judicial body with jurisdiction to examine the case on points of fact and law, did not issue a decision to hold a trial in camera, but relocated the trial to the detention facility.

34. The general public was therefore not formally excluded from the trial before the Court of Appeal. The mere fact that the trial took place on the premises of the detention facility does not necessarily lead to the conclusion that it lacked publicity. Nor did the fact that any potential spectators would have had to undergo certain identity and possibly security checks in itself deprive the hearing of its public nature (see *Riepan v. Austria*, no. 35115/97, § 28, ECHR 2000-XII).

35. However, it appears that no members of the public were present at the Court of Appeal's only hearing. Moreover, it has not been demonstrated that the national authorities took any measures to inform the public of the time and place of that hearing.

36. The Court therefore finds that the national authorities failed to take adequate compensatory measures to counterbalance the detrimental effect that holding the applicant's trial in a restricted area of the detention facility had on its public nature (see *Starokadomskiy v. Russia (no.2)*, no. 27455/06, § 58, 13 March 2014).

37. Furthermore, the lack of publicity in the present case was not justified for any of the reasons set out in the second sentence of Article 6 § 1 of the Convention. The Court notes that, in the Court of Appeal's interim decision of 29 January 2004, no reasons were given for holding the trial in a location other than a regular courtroom.

38. The Court also notes that the subsequent hearing of the applicant's cassation appeal by the Supreme Court, even though it took place in public, was not sufficient to remedy the lack of publicity at the appellate hearings, as the Supreme Court's jurisdiction was limited to questions of law and it had no power to hold a full rehearing of the case (see *Hummatov*, cited above, § 151).

39. As to the Government's argument that the applicant's lawyer did not object to the hearing being held at the detention facility, the Court notes that the applicant did raise the issue of the lack of a public hearing in his appeal to the Supreme Court.

40. However, the Supreme Court did not address the applicant's explicit complaint concerning the lack of publicity or any issues relating to the applicant's lack of objection before the appellate court in that regard, or remedy the appellate court's failure to demonstrate the need to hold the hearing at the detention facility.

41. Accordingly, the Court concludes that there has been a violation of Article 6 § 1 of the Convention owing to the lack of a public hearing before the Court of Appeal.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION (LENGTH OF THE PROCEEDINGS)

42. The Government argued that the applicant had failed to exhaust domestic remedies in respect of this complaint as he had failed to lodge a complaint against the prison administration for failing to send his cassation appeal to the Supreme Court in time.

43. The Court dismisses the Government's objection as this remedy could not provide effective redress for the alleged breach which had already occurred and the applicant should not therefore have been expected to make use of it in order to exhaust domestic remedies in respect of this complaint.

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

45. The general principles concerning the right to a hearing within a reasonable time have been summarised in *Ilgar Mammadov v. Azerbaijan (no. 2)* (no. 919/15, § 170, 16 November 2017).

46. The Court observes that the period under consideration in the present case began on 9 May 2003, when the applicant was charged, and ended on 15 December 2010, when the Supreme Court upheld the lower courts' judgments. The overall length of the proceedings was therefore seven years and seven months.

47. In the present case, however, the delay in the examination of the applicant's case was directly attributable to the prison administration, who had failed to send his appeal to the Supreme Court in time. This resulted in a long period of inactivity lasting from 26 October 2004, when the applicant submitted his cassation appeal to the prison administration, until November 2007, when he re-lodged the appeal through his lawyer, that is just over three years. It moreover resulted in further proceedings to restore the time-limit for lodging a cassation appeal, which lasted until 24 November 2010 – that is another two years and ten months. During this time the applicant lodged four

requests to restore the time-limit before the Supreme Court finally granted the last one.

48. The Court reiterates in this context that in determining the reasonableness of the length of proceedings in criminal cases, the question of whether the applicant is in detention is a relevant factor (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A). The Court emphasises that this factor was significant in the applicant's case, as he had been sentenced to life imprisonment.

49. In view of the above, and in particular that the time taken for the applicant's cassation appeal to finally reach the Supreme Court was more than three years out of the total seven years and seven months it took to deal with the case, the Court finds such a long period of inactivity unacceptable, especially since the immediate reason for the inactivity in the proceedings was the negligence of the authorities.

50. The Court therefore concludes that, in the circumstances of the case, the "reasonable time" requirement was not complied with. There has accordingly also been a violation of Article 6 § 1 of the Convention on this account.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

51. Having regard to the facts of the case, the submissions of the parties and its findings above (see paragraphs 41 and 50 above), the Court considers that it has dealt with the main legal questions raised by the case and that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. The applicant claimed 55,000 euros (EUR) in respect of non-pecuniary damage and EUR 20,500 in respect of costs and expenses incurred before the domestic courts and the Court.

53. The Government contested the claims as excessive and unsubstantiated.

54. Ruling on an equitable basis, the Court awards the applicant EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable to him.

55. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,000 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid directly to the applicant's representative.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the lack of a public hearing and the excessive length of the criminal proceedings under Article 6 § 1 of the Convention admissible and the complaint concerning the fairness of the criminal proceedings under Article 6 § 1 of the Convention inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings;

4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 13 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to the applicant's representative;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 June 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President