

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

FIRST SECTION

CASE OF BABAYEVA v. AZERBAIJAN

(Application no. 33184/16)

JUDGMENT

STRASBOURG

17 October 2024

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



In the case of Babayeva 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. 33184/16) 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 3 June 2016 by an Azerbaijani national, Ms Samuzar Sayid gizi Babayeva (*Səmuzər Səyid qızı Babayeva* – "the applicant"), who was born in 1979, lives in Baku and was represented by Mr K. Bagirov, Mr R. Aliyev and Mr S. Rahimli, lawyers based in Azerbaijan, and Mr P. Leach and Ms R. Remezaite, lawyers based in the United Kingdom;

the decision to give notice of the application to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov;

the parties' observations;

Having deliberated in private on 26 September 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the death of the applicant's brother, E.B. (born in 1983), in penitentiary establishment no. 14 ("the prison"), where he had been serving a sentence, and his alleged ill-treatment by prison guards.

2. According to the Government, on 13 December 2014, after being prevented from visiting a fellow inmate in the medical unit without permission, E.B. reacted aggressively by slamming a table and was consequently handcuffed by the prison guards. He was then taken to the office of the prison governor, who ordered E.B.'s handcuffs to be removed. Subsequently, E.B. attempted to hit the prison governor, which prompted the prison guards to use rubber truncheons in order to subdue him. The prison governor then ordered E.B. to be placed in a punishment cell for fifteen days.

3. Upon his transfer, E.B. was examined by the medical staff who prescribed him medicine for the injuries he had sustained. According to the inmate's medical record, E.B. had had no underlying health conditions, but the medical examination carried out on 13 December 2014 revealed multiple injuries on E.B.'s body, including on his face, neck, spine, arms and legs, and he was prescribed painkillers.

4. On 22 December 2014 E.B. was discovered lying on the floor of his cell by fellow inmates who then informed the prison guards.

5. On the same date the investigator examined E.B.'s body, ordered a forensic medical examination and questioned several inmates as witnesses.

6. On 10 January 2015 criminal proceedings were instituted by the Garadagh District Prosecutor's Office under Article 309.1 (exceeding of official powers) of the Criminal Code.

7. On 21 January 2015 forensic medical examination report no. 156 was issued, concluding that injuries causing less serious harm to health had been found on E.B.'s body, including on his face, neck, spine, arms and legs, and that those injuries could have been caused by the use of rubber truncheons. The report concluded that there was no causal link between E.B.'s death and the injuries found on his body and that E.B. had died of acute heart failure.

8. On 10 February 2015 the investigation was handed over to the Baku City Prosecutor's Office.

9. In reply to the applicant's numerous requests concerning the investigation, the prosecuting authorities informed her on various dates that the relevant investigative actions had been taken and that she would be informed of the investigation's results.

10. On 23 April 2015 the applicant lodged a request with the prosecuting authorities asking for recognition of her victim status.

11. By a decision of 30 April 2015 the investigator in charge of the case dismissed her request, finding that since there was no causal link between the injuries on E.B.'s body and his death, and therefore the use of rubber truncheons on him did not constitute a criminal offence, the applicant could not be recognised as a victim in her brother's stead.

12. On 6 May 2015, upon the investigator's request, the Gusar District Court ordered the exhumation of E.B.'s body, which was carried out on 21 May 2015.

13. On 10 June 2015 additional forensic medical examination report no. T109/2015 was issued, which confirmed the findings of the first report.

14. By a decision of 23 July 2015 the investigator decided to partially discontinue the criminal proceedings, finding that there had been no criminal element in the actions of the prison employees. In that connection, relying on the above-mentioned forensic reports, he held that there was no link between the death and the injuries found on E.B.'s body. As regards the origin of the injuries, the investigator noted that they had been inflicted by prison guards using rubber truncheons following E.B.'s breach of disciplinary rules and his violent actions on 13 December 2014. By the same decision, the investigator again refused to grant the applicant victim status or to provide her with the relevant documents concerning the criminal investigation.

15. On 5 August 2015 the investigator definitively terminated the criminal proceedings and informed the applicant about that decision.

16. On 10 August 2015 the applicant asked the investigator to provide her with a copy of the decision terminating the criminal proceedings.

17. By a letter of 13 August 2015 the investigator dismissed the applicant's request, finding that, as the applicant did not have victim status, she could not obtain a copy of the requested decision.

18. On 5 September 2015 the applicant lodged a complaint against the investigator's decision terminating the criminal proceedings. In particular, she disputed the official version of events – that her brother had died as a result of acute heart failure – arguing that his death had resulted from being tortured by prison guards. She also asked the court to declare the prosecuting authorities' refusal to grant her victim status unlawful and to provide her with the relevant documents relating to the criminal proceedings.

19. Following a series of procedural decisions, on 23 November 2015 the Sabail District Court dismissed the applicant's complaint, reiterating the investigator's findings that the use of force against E.B. had been justified because he had failed to comply with disciplinary rules and had been violent towards the prison guards. Relying on the two forensic reports mentioned above, the court further held that there was no link between the injuries found on E.B.'s body and his death.

20. The applicant appealed against that decision, reiterating her complaints.

21. On 3 December 2015 the Baku Court of Appeal upheld the first-instance court's decision.

22. Relying on Articles 2, 3 and 13 of the Convention, the applicant complained that her brother had been ill-treated and deprived of his life in prison, and that no effective investigation had been carried out in that connection.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLES 2 AND 3 OF THE CONVENTION

23. The Court finds that the applicant's complaints fall to be examined only under Articles 2 and 3 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018) and that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

24. The relevant general principles on the substantive and procedural obligations under Articles 2 and 3 of the Convention can be found in *Shuriyya Zeynalov v. Azerbaijan* (no. 69460/12, §§ 48-51, 66-71 and 80-82, 10 September 2020).

A. Substantive aspect of Articles 2 and 3 of the Convention

25. The Court observes that, although the parties differ in their views as to the cause of E.B.'s death, it is undisputed that E.B. was found dead on 22 December 2014 in the prison where he had been serving his sentence and he had not been suffering from any life-threatening illnesses at that time. It is also undisputed by the parties that on 13 December 2014, only nine days before his death, E.B. sustained multiple injuries inflicted by the prison guards for breaching disciplinary rules.

26. In that connection, the Court reiterates that the protection against ill-treatment is absolute, that such treatment cannot be justified by the victim's behaviour, and that the use of force by State officials is allowed only where it is strictly necessary in the given circumstances (see *Gladović v. Croatia*, no. 28847/08, § 23, 10 May 2011). In the present case, however, the domestic authorities considered, without addressing the necessity and proportionality of the use of force against him, that the actions of the prison guards had been justified since E.B. had violated disciplinary rules. The Court cannot accept that the heavy use of rubber truncheons on E.B. could be considered as a proportionate response to a mere breach of disciplinary rules, in the light of the seriousness of the injures observed on his body, which were characterised as injuries causing less serious harm to health (see paragraph 7 above) but clearly fell within the scope of Article 3 of the Convention. Nor does the Court lose sight of the fact that, several months before the termination of the criminal case, the investigator had seemingly already concluded that there had been no criminal element in the actions of the prison guards when refusing to grant the applicant victim status (see paragraph 11 above).

27. As regards the State's responsibility under Article 2 of the Convention for the death of an individual in detention, the Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them, including an obligation to account for any injuries suffered in custody which is particularly stringent when an individual dies (see *Shuriyya Zeynalov*, cited above, §§ 67-68).

28. In the present case, the Government failed to demonstrate how the placement of an inmate in a punishment cell after an apparently severe beating was an appropriate course of action, given that he died of acute heart failure after remaining several days in that cell. In that connection, and even assuming that the cause of E.B.'s death was acute heart failure and that the injuries he sustained on 13 December 2014 were not fatal, the Court considers that by leaving E.B. in a punishment cell in the absence of sufficient and appropriate monitoring or supervision, the authorities put his health and life in danger. Their failure to take necessary steps in order to ensure that he was properly examined and treated had, given the circumstances, resulted in his death (compare *Karsakova v. Russia*, no. 1157/10, § 52, 27 November 2014).

29. The Court thus concludes that the Government failed to rebut the presumption that the State was responsible for E.B.'s death. Moreover, noting that his injuries were serious enough to trigger the application of Article 3 of the Convention (see paragraph 26 above), the Court finds it established that prior to his death E.B. was subjected to treatment contrary to Article 3 of the Convention (see *Karpylenko v. Ukraine*, no. 15509/12, § 122, 11 February 2016).

30. There has accordingly been a violation of the substantive aspect of Articles 2 and 3 of the Convention.

B. Procedural aspect of Articles 2 and 3 of the Convention

31. The Court observes that E.B. died in prison on 22 December 2014 in suspicious circumstances. Although some initial steps were taken by the investigator on that same day (see paragraph 5 above), the domestic authorities only instituted criminal proceedings in connection with his death on 10 January 2015, almost twenty days later. Such a delay appears to contradict the requirement of promptness of the investigation (see *Bouyid v. Belgium* [GC], no. 23380/09, § 121, ECHR 2015).

32. The Court notes that the investigating authorities failed to take all reasonable steps available to them to secure evidence concerning the death and ill-treatment of E.B. In particular, they did not make any attempt to obtain the video recordings from the prison's security cameras in order to clarify the circumstances surrounding the use of force against him. They also failed to adequately assess the necessity and proportionality of the use of force by the prison guards, limiting themselves to assessing their compliance with their duties and finding that the use of force by them was justified.

33. Moreover, the prosecuting authorities repeatedly refused to grant the applicant victim status or to inform her of the progress and outcome of the investigation. During all stages of the domestic proceedings they failed to provide her with the relevant decisions taken in the course of the criminal proceedings (see *Shuriyya Zeynalov*, cited above, § 86).

34. Having regard to the above considerations, the Court concludes that the authorities failed to carry out an effective investigation into the ill-treatment and death of E.B.

35. There has accordingly been a violation of the procedural aspect of Articles 2 and 3 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage. In respect of costs and expenses, she claimed EUR 9,604.45 for the work of her representatives from Azerbaijan and

8,620.94 pounds sterling for the work of her representatives from the United Kingdom.

37. The Government contested the amounts as excessive and unsubstantiated.

38. The Court awards the applicant EUR 35,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

39. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 1,500 in respect of costs and expenses incurred in the proceedings before the domestic courts and the Court, plus any tax that may be chargeable to the applicant, to be paid directly to her representative, Mr K. Bagirov.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention under its substantive and procedural limbs;

3. *Holds* that there has been a violation of Article 3 of the Convention under its substantive and procedural limbs;

4. *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 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to her representative, Mr K. Bagirov;
   (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 17 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President