

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

FIFTH SECTION

CASE OF FAYZOV v. AZERBAIJAN

(Application no. 48475/12)

JUDGMENT

STRASBOURG

18 February 2021

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



In the case of Fayzov v. Azerbaijan,

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

Mārtiņš Mits, *President,*
Lətif Hüseynov,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application 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 Ildar Rustamoviç Fayzov (*İldar Rüstəmoviç Fayzov* - "the applicant"), on 26 July 2012;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaint concerning Article 5 § 1 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 28 January 2021,

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

INTRODUCTION

1. The case concerns, under Article 5 § 1 of the Convention, the applicant's detention without a court order for certain periods of time.

THE FACTS

2. The applicant was born in 1983 and lived at the material time in Baku. He was represented by Mr A. Ismayilov, a lawyer based in Baku. The Government were represented by their Agent, Mr Ç. Əsgərov.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. On 18 January 2012 criminal proceedings were instituted against the applicant under Article 234.1 (illegal possession of narcotic substances in an amount exceeding that necessary for personal use, without intention to sell) of the Criminal Code. On 19 January 2012 the Surakhani District Court ("the District Court ") ordered the applicant's detention pending trial for a period of two months.

5. On 13 March 2012 the District Court extended the applicant's remand in custody until 18 April 2012.

6. On 16 April 2012 the prosecutor in charge of the criminal case ("the prosecutor") sent the indictment to the court.

7. By decision of 3 May 2012, the District Court remitted the case back to the prosecutor due to the violation of the applicant's right to the legal

assistance. The court also extended the applicant's remand in custody until 3 June 2012.

8. On 26 May 2012 the prosecutor lodged the indictment with the District Court.

9. On an unspecified date the applicant lodged a request before District Court asking for his release and termination of the criminal proceedings against him. By the decision of 22 June 2012, the District Court dismissed the applicant's request and ordered that the preventive measure of remand in custody applied in respect of him remain "unchanged". By the same decision, the District Court also accepted the bill of indictment of the prosecutor and fixed a hearing for 3 July 2012.

RELEVANT LEGAL FRAMEWORK

10. A detailed description of the relevant provisions of the Code of Criminal Procedure (the CCrP) concerning pre-trial detention can be found 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).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

11. The applicant complained that he had been detained without a court order during the periods between 18 April and 3 May 2012 and between 3 and 22 June 2012. He relied on Article 5 § 1 of the Convention which reads as follows, in the relevant part:

> "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:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; ..."

A. Admissibility

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

B. Merits

1. The parties' submissions

13. The Government did not submit any observations on the merits.
14. The applicant maintained his complaint.

2. The Court's assessment

15. The Court notes that on 19 January 2012 the District Court ordered the applicant's pre-trial detention for two months. On 13 March 2012 the District Court extended it until 18 April 2012 and the latter date marked the expiry of the judicial detention order. On 16 April 2012 the investigation was completed and the indictment was sent to the District Court for trial. On 3 May 2012 District Court remitted the case back to the prosecutor office and extended the applicant's remand in custody by a month, until 3 June 2012. Accordingly, during the period from 18 April to 3 May 2012 the applicant was detained in the absence of any judicial order authorising his detention.

16. The Court furthermore notes that the period of the applicant's pre-trial detention, authorised by the District Court's most recent detention order of 3 May 2012, expired on 3 June 2012. On 26 May 2012 the prosecutor lodged the indictment with the District Court. On 22 June 2012 District Court ordered, among other things, that the preventive measure of remand in custody applied in respect of the applicant remain "unchanged". Consequently, the applicant's detention during the period from 3 to 22 June 2012 was also in the absence of any judicial order authorising his detention.

17. In this connection, the Court notes that it has already examined a similar complaint in numerous cases against Azerbaijan concerning the practice of holding applicants in custody solely on the basis of the fact that an indictment has been filed with a trial court. In those cases, the Court concluded that there had been a violation of Article 5 § 1 of the Convention, in that the applicants' detention had not been based on a court decision and had therefore been unlawful within the meaning of that provision (see, among other cases, *Farhad Aliyev,* cited above*,* §§ 174-179; *Allahverdiyev v. Azerbaijan*, no. 49192/08, §§ 45-46, 6 March 2014; and *Haziyev v. Azerbaijan*, no. 19842/15, §§ 25-31, 6 December 2018). The Court sees no reason to reach a different conclusion in the present case, and concludes that the applicant's detention from 18 April to 3 May 2012 and from 3 to 22 June 2012, which was not based on a court order, was unlawful within the meaning of Article 5 § 1.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. 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

20. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

21. The Government submitted that the applicant's claim was unsubstantiated.

22. The Court awards the applicant the sum of EUR 4,500 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

23. The applicant claimed EUR 2,300 for legal costs incurred in the proceedings before the domestic authorities and the Court. He submitted the legal contract concluded with his representative.

24. The Government submitted that the applicant's claim was unsubstantiated and excessive. In that connection, the Government asked the Court to apply a strict approach in respect of the applicant's claim.

25. 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, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 covering costs under all heads, plus any tax that may be chargeable on the applicant.

C. Default interest

26. The Court considers it appropriate that the default interest 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*

(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 850 (eight hundred and fifty 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;

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

Done in English, and notified in writing on 18 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Mārtiņš Mits
Deputy Registrar	President