

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

FIRST SECTION

CASE OF HAZIYEV v. AZERBAIJAN

(Application no. 65893/16)

JUDGMENT

STRASBOURG

24 October 2024

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



In the case of Haziyev 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. 65893/16) 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 8 November 2016 by an Azerbaijani national, Mr Seymur Mashgul oglu Haziyev (*Seymur Məşgül oğlu Həziyev* – "the applicant"), who was born in 1982, lives in Absheron and was represented by Ms S. Humbatova, a lawyer based in Azerbaijan;

the decision to give notice of the complaints concerning Articles 6 and 10 of the Convention to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 3 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the criminal conviction of the applicant, a journalist, for hooliganism.

2. The circumstances relating to the applicant's arrest and detention are described in detail in *Haziyev v. Azerbaijan* (no. 19842/15, §§ 7-13, 6 December 2018).

3. At around noon on 29 August 2014, when the applicant was on his way to work, he was approached by M.H., who asked him why he had not replied to his messages sent via Facebook. The applicant, who did not know M.H., answered that he had probably not seen his messages. According to the applicant, immediately after receiving that answer, M.H. physically assaulted him by punching him in the face. The applicant began defending himself and hit M.H. with a glass water bottle that he had just bought from the market. The applicant then left the scene of the incident. On seeing a police car he immediately asked the police officers for help.

4. According to the Government, after being approached by M.H., the applicant pushed and punched him. This resulted in an altercation between them, during which applicant broke a glass water bottle over M.H.'s head. He then left the scene, before being apprehended by the police.

5. At 2.40 p.m. on the same day an investigator issued a report stating that the applicant was being detained as a suspect. He was suspected of hitting M.H. over the head with a glass water bottle and of punching and kicking him in the face. The applicant objected, asserting that the case against him had been fabricated and that M.H. had been sent by the police to provoke him.

6. According to the forensic medical examination reports issued on 29 August 2014, the applicant had no physical injuries, but M.H. had suffered head trauma and had bruising around his right eye.

7. On 30 August 2014 the applicant was charged under Article 221.3 (hooliganism) of the Criminal Code, and the Absheron District Court ordered that he be detained for two months pending trial. During an interview as an accused, the applicant disputed the charges, stating that he had been acting in self-defence after a sudden and unprovoked attack by M.H.

8. The investigator organised a face-to-face confrontation between the applicant and M.H. This was held on 19 September 2014, and the applicant maintained his version of events.

9. On 25 October 2014 the investigator issued a bill of indictment under Article 221.3 of the Criminal Code and filed it with the Absheron District Court.

10. In the course of the judicial proceedings, the applicant pleaded not guilty, stating that the criminal case against him had been fabricated to punish him for his writings and political activities, and that M.H. had been sent by the police in order to provoke him into a fight. He alleged that he had also been assaulted in a previous altercation of a similar nature, and that M.H.'s connection with the police could be proved by examining his phone calls and text messages. The applicant did not deny hitting M.H. with a glass water bottle but stated that he had done so in self-defence after the latter had already started punching him.

11. The first-instance court rejected the applicant's request to cross-examine M.H. during the trial, having regard to the latter's privilege against self-incrimination.

12. On 29 January 2015 the Absheron District Court convicted the applicant as charged and sentenced him to five years' imprisonment. In convicting him, the court relied on the statements made by M.H. and by the police officers who had taken M.H. and the applicant to the police station after the fight, and on the forensic medical examination reports. The judgment made no comment on the applicant's specific arguments concerning the connection between M.H. and the police, and his allegation that the fight had been set up in order to frame him.

13. The applicant appealed, complaining that the first-instance court's judgment lacked adequate reasoning and that his right to equality of arms and adversarial proceedings had been breached.

14. On 29 September 2015 the Sumgayit Court of Appeal upheld the first-instance court's judgment. The appellate court did not provide reasons

as to why it considered the applicant's arguments concerning the circumstances of his altercation with M.H. to be groundless.

15. On 15 April 2016 the Supreme Court upheld the appellate court's judgment. The decision was served on the applicant on 13 May 2016.

16. The applicant complained under Article 6 §§ 1 and 3 (d) of the Convention that the criminal proceedings as a whole had been unfair and arbitrary, that the domestic courts had failed to provide reasons for their decisions, and that he had been denied the right to cross-examine the witnesses against him. He also complained under Article 10 of the Convention that the criminal case against him had been fabricated to punish him for his writings and political activities.

THE COURT'S ASSESSMENT

I. THE GOVERNMENT'S PRELIMINARY OBJECTION AS TO THE ADMISSIBILITY OF THE APPLICATION

17. The Government submitted that the applicant had failed to comply with the six-month rule[1] when lodging his application with the Court on 8 November 2011. They argued that since the applicant's representatives had been present during the delivery of the Supreme Court's decision on 15 April 2016, the six-month period had begun to run on that date.

18. The Court reiterates that where an applicant is entitled to be served automatically with a copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the six-month period as running from the date of service of the copy of the written decision, irrespective of whether that decision was previously delivered orally (see *Akif Hasanov v. Azerbaijan*, no. 7268/10, § 27, 19 September 2019).

19. Given that the applicant was served with a copy of the Supreme Court's decision on 13 May 2016, he thus complied with the six-month time-limit for lodging his application before the Court.

20. The Court therefore rejects the Government's objection.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

21. 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.

[1] Protocol No. 15 to the Convention has shortened to four months from the final domestic decision the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the final domestic decision was taken prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

22. The general principles concerning the right to a fair trial have been summarised in *Fatullayev v. Azerbaijan (no. 2)* (no. 32734/11, §§ 76-83, 7 April 2022).

23. Turning to the circumstances of the present case, the Court notes that the applicant never denied hitting M.H. with a glass bottle, nor did he challenge the fact that the altercation had taken place. However, from the very beginning of the pre-trial investigation and throughout the trial he consistently asserted that the criminal case against him had been fabricated, that M.H. had been sent by the police in order to provoke him into a fight, and that he had hit M.H. with a glass bottle in self-defence only after the latter had started punching him.

24. The applicant's arguments therefore concerned both the factual circumstances and the legal issues in his case. It appears that those arguments were both important and pertinent, in that the applicant's version of events contradicted that of the prosecution, which was itself based on M.H.'s statements alleging that the applicant had initiated the fight by punching him. If proved, the applicant's arguments could potentially have called into question the plausibility of M.H.'s statements and affected the outcome of the trial, which might have led to the applicant's acquittal. Nevertheless, the first-instance court ignored his arguments completely and did not explain why it considered the prosecution's account of events more reliable than that of the applicant. In particular, it failed to provide any reasons why it considered M.H.'s statements more objective and reliable than those of the applicant. In that connection, the Court does not overlook the fact that, in view of M.H.'s privilege against self-incrimination, the trial court did not give the applicant an opportunity to cross-examine him (see paragraph 11 above, and compare *Cabral v. the Netherlands*, no. 37617/10, § 34, 28 August 2018).

25. The Court observes that the police officers' statements merely confirmed the fact that a fight had taken place between the applicant and M.H., but did not indicate that the applicant had been the one to initiate the altercation.

26. Furthermore, none of the defects of the original trial were remedied by either the Court of Appeal or the Supreme Court. The higher courts failed to address properly the applicant's *prima facie* pertinent arguments and to provide reasoned explanations as to why they considered those arguments to be groundless.

27. The Court has previously held, in examining the fairness of criminal proceedings, that where the domestic courts ignore a specific, pertinent and important point made by the accused, they fall short of their obligations under Article 6 § 1 of the Convention (see *Nechiporuk and Yonkalo v. Ukraine*, no. 42310/04, § 280, 21 April 2011, and *Karimov and Others v. Azerbaijan*, nos. 24219/16 and 2 others, § 30, 22 July 2021). Taking the view that in the present case the domestic courts' decisions lacked adequate reasoning, the Court concludes that the criminal proceedings against the applicant,

considered as a whole, were not compatible with the guarantees of a fair hearing.

28. There has accordingly been a violation of the applicant's right to a fair trial as protected by Article 6 § 1 of the Convention.

29. In view of the above findings, the Court considers that it is not necessary to examine whether the applicant's right to cross-examine witnesses against him was also breached (compare *Rustamzade v. Azerbaijan (no. 2)*, no. 22323/16, § 44, 23 February 2023).

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

30. Having regard to the facts of the case, the submissions of the parties, and its findings above (see paragraph 28 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 10 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; compare also *Hajizade and Abdullayev v. Azerbaijan* [Committee], no. 4854/10, § 68, 18 January 2024).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. The applicant claimed 56,000 euros (EUR) in respect of pecuniary damage for his loss of earnings. In support of his claim, he submitted two statements, from the newspaper *Azadliq* and an association named *Cenlibart*, confirming that he had previously received a monthly salary of 750 Azerbaijani manats and 1,000 United States dollars from them respectively.

32. The applicant further claimed EUR 25,000 in respect of non-pecuniary damage and EUR 4,791 in respect of costs and expenses incurred before the domestic courts and the Court.

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

34. As regards the applicant's claim for loss of earnings, even assuming that there is a causal link between the damage claimed and the violation found, the Court considers that the applicant did not submit the relevant documentary evidence supporting this claim. In particular, in the absence of any employment contract, payslip, bank account statement or other document confirming the applicant's loss of salary, the Court cannot accept the two above-mentioned statements as relevant documentary evidence. Moreover, the applicant failed to make submissions as to whether there were any particular circumstances preventing him from submitting one of the aforementioned documents confirming his loss of salary (see *Haziyev*, cited above, § 48). The Court therefore rejects this claim.

35. However, the Court awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

36. Having regard to the documents in its possession, the Court also considers it reasonable to award EUR 1,000 for the costs and expenses incurred in the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 1 of the Convention admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 10 of the Convention;

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 3,600 (three thousand six 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;
   (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 claims for just satisfaction.

Done in English, and notified in writing on 24 October 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President