

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

FIFTH SECTION

CASE OF HUSEYNOV v. AZERBAIJAN

(Application no. 3899/08)

JUDGMENT

STRASBOURG

18 January 2018

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Huseynov v. Azerbaijan,

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

André Potocki, *President,*
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 12 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 3899/08) 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 Mushfig Tofig oglu Huseynov (*Müşfiq Tofiq oğlu Hüseynov* – "the applicant"), on 16 January 2008.

2. The applicant was represented by Ms S. Agayeva, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. On 26 May 2016 the complaints concerning the alleged lack of justification for the applicant's pre-trial detention (Article 5 § 3 of the Convention), the absence of the applicant from the hearings concerning the extension of his pre-trial detention (Article 5 § 4 of the Convention) and the alleged violation of the applicant's right to the presumption of innocence (Article 6 § 2 of the Convention) were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1972 and lives in Saatli.

5. The applicant was a journalist and worked for the *Bizim Yol* newspaper at the time of the events described below.

A. Institution of criminal proceedings against the applicant and his remand in custody

6. Following the publication of a series of articles criticising the activities of the Ministry of Labour and Social Security ("the Ministry") written by the applicant, the head of the Ministry's administration, R.A., contacted the applicant and asked for a meeting. They met on 11 June 2007, and then on 19 and 20 July 2007 as well. According to the applicant, during these meetings R.A. firstly demanded that he stop writing articles about the Ministry. R.A. also threatened him saying that he should not forget the case of B.H., a journalist who had been heavily beaten in May 2006. However, when R.A. realised that the applicant would continue to write articles about the Ministry's activities, he proposed him money in exchange for stopping writing the articles. According to the applicant, at the beginning he rejected that proposal, but he later accepted it because of his difficult financial situation.

7. On 24 July 2007 they met again at a restaurant in Baku. During the meeting when the applicant received 3,500 United States dollars from R.A., agents of the Ministry of National Security ("the MNS") intervened and arrested him.

8. On the same day criminal proceedings were instituted against the applicant under Article 311.1 (bribe-taking) of the Criminal Code.

9. On 26 July 2007 the applicant was charged under Article 311.1.

10. On the same day the Nasimi District Court ordered the applicant's detention pending trial for a period of three months. The judge substantiated the necessity for this measure as follows:

> "Taking into account the possibility of the accused's absconding from the investigation, and the character and gravity of the crime attributed to him, I consider it necessary to apply the preventive measure of remand in custody in respect of him."

11. On 27 July 2007 the applicant appealed against the detention order, claiming that there was no risk of his absconding or obstructing the investigation and that the court had failed to take his personal situation into consideration.

12. On 3 August 2007 the Baku Court of Appeal dismissed the appeal. The appellate court did not make mention of the applicant's particular complaints. The relevant part of the decision reads as follows:

> "The first-instance court, when deciding to apply the preventive measure of remand in custody in respect of Mushfig Huseynov, has correctly taken into account the character and degree of public dangerousness of the committed crime, the possibility of his absconding from the investigation, and the fact that the sanction provided for the commission of this act is over two years' imprisonment.
>
> Therefore, there is no ground for granting the appeal and quashing the impugned decision."

13. On 17 October 2007 the prosecutor in charge of the criminal case lodged an application with the court asking for an extension of the applicant's pre-trial detention for a period of three months. In that connection, he submitted that more time was needed to complete the investigation.

14. On 19 October 2007 the Nasimi District Court granted the prosecutor's request by extending the applicant's detention pending trial by three months, until 24 January 2008. The court substantiated the need for the extension by the necessity of additional time to carry out further investigative actions, as well as by the seriousness of the charge and the likelihood that if released he might abscond. It appears from the court decision and the transcript of the court hearing of 19 October 2007 that the hearing was held in the absence of the applicant and his lawyer.

15. On 22 October 2007 the applicant appealed against that decision, claiming that the first-instance court had failed to justify his continued detention and to take his personal situation into account. The applicant did not make any mention of his and his lawyer's absence from the hearing of 19 October 2007 in his appeal.

16. On 31 October 2007 the Baku Court of Appeal dismissed the appeal, finding that the Nasimi District Court's decision of 19 October 2007 was justified. It appears from the appellate court's decision and the transcript of the court hearing of 31 October 2007 that the hearing was held in the absence of the applicant, but in the presence of his lawyer.

17. On 21 January 2008 the Assize Court found the applicant guilty and sentenced him to six years' imprisonment.

18. On 4 April 2008 the Baku Court of Appeal upheld the applicant's conviction, but reduced his sentence to five years' imprisonment.

19. On 29 July 2008 the Supreme Court upheld the Baku Court of Appeal's judgment of 4 April 2008.

20. On 25 December 2009 the applicant was released from serving the remainder of his sentence after being pardoned by a presidential decree.

B. Broadcast of a television programme concerning the applicant's arrest

21. On 1 August 2007 a television programme concerning the applicant's arrest on 24 July 2007 was broadcast on a private television channel. It appears from the transcript of the broadcast that the programme began with a narrated section, the transcript of which reads as follows in its relevant part:

> "Although in the Republic of Azerbaijan, which has chosen to take a democratic development path, all the legislative guarantees and comprehensive conditions have been established for freedom of speech and of the press, it is still possible to encounter members of the press who violate the requirements, established by the Mass Media

> Act, prohibiting abuse of the freedom of the press and performance of unlawful actions incompatible with journalistic ethics. One of these undesirable members of the mass media is the editor of the *Bizim Yol* newspaper, Huseynov Mushfiq Tofig oglu – who was accused of having committed serious and especially serious crimes and was convicted of libel and defamation under Articles 147.2 and 148 of the Criminal Code of the Republic of Azerbaijan by the Nasimi District Court's judgment of 25 April 2006 – [he] did not draw conclusions from that and committed an even more serious crime, bribe-taking ..."

22. The programme then showed the video recordings, filmed by the law-enforcement authorities, of the meeting and dialogue between the applicant and R.A., and of the applicant's arrest by the agents of the MNS when he was taking money from R.A. At the end of the programme the narrator stated that the criminal investigation was ongoing and that the public would be informed of further developments.

II. RELEVANT DOMESTIC LAW AND PRACTICE

23. The relevant provisions of the Code of Criminal Procedure concerning the pre-trial detention are described in detail in the Court's judgments 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 relevant decisions of the Plenum of the Supreme Court concerning the pre-trial detention are described in detail in the Court's judgment in *Allahverdiyev v. Azerbaijan* (no. 49192/08, §§ 31-32, 6 March 2014).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

24. The applicant complained under Article 5 of the Convention that the domestic courts had failed to justify the need for his detention and provide reasons for his continued detention. The Court considers that this complaint falls to be examined under Article 5 § 3 of the Convention, which reads as follows:

> "3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

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

B. Merits

1. The parties' submissions

26. The applicant maintained his complaint.

27. The Government contested the applicant's submissions, stating that the domestic courts had given sufficient and relevant reasons for the applicant's pre-trial detention.

2. The Court's assessment

28. The Court refers to the summaries of its case-law set out in the *Allahverdiyev* judgment (cited above, §§ 51-55), which are equally pertinent to the present case.

29. As regards the period to be taken into consideration for the purposes of Article 5 § 3, in the present case, this period commenced on 24 July 2007, when the applicant was arrested, and ended on 21 January 2008, when the first-instance court convicted him. Thus, the applicant's pre-trial detention lasted five months and twenty-eight days in total.

30. The Court observes that the applicant's detention was first ordered when he was brought before the judge at the Nasimi District Court on 26 July 2007. That decision was upheld by the Baku Court of Appeal on 3 August 2007. His detention was subsequently extended by the Nasimi District Court's decision of 19 October 2007 for a period of three months. That decision was upheld by the Baku Court of Appeal's decision of 31 October 2007.

31. The Court observes that both the Nasimi District Court and the Baku Court of Appeal used a standard template when ordering and extending the applicant's pre-trial detention (see paragraphs 10, 12, 14 and 16 above). In particular, the Court notes that both the first-instance court and the appellate court limited themselves to repeating a number of grounds for detention in an abstract and stereotyped way, without giving any reasons why they considered those grounds relevant to the applicant's case. They failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons (see *Farhad Aliyev*, cited above, §§ 191-94, and *Muradverdiyev*, cited above, §§ 87-91).

32. The Court further observes that the domestic courts also relied on irrelevant grounds when they extended the applicant's pre-trial detention. In particular, they substantiated their decisions by stating that more time was needed to complete the investigation. However, the Court reiterates that, under Article 5 § 3, grounds such as the need to implement further investigative measures, or the fact that proceedings have not yet been completed, do not correspond to any of the acceptable reasons for detaining a person pending trial (see *Allahverdiyev*, cited above, § 60).

33. In view of the foregoing considerations, the Court concludes that, by using a standard formula merely listing the grounds for detention without addressing the specific facts of the applicant's case, and by relying on irrelevant grounds, the authorities failed to give "relevant" and "sufficient" reasons to justify the need for the applicant's pre-trial detention.

34. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

35. The applicant further complained, under Article 6 § 2 of the Convention, that the broadcast of the television programme concerning his arrest had amounted to an infringement of his right to the presumption of innocence. Article 6 § 2 of the Convention provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

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

B. Merits

1. The parties' submissions

37. The applicant maintained his complaint, submitting that the impugned broadcast had amounted to a declaration of his guilt, presenting him as a criminal.

38. The Government contested the applicant's argument. They submitted that the television programme in question had been broadcast by a private television channel and not by a State television channel. They further submitted that no violation of Article 6 § 2 of the Convention may be implied from the transcript of the broadcast submitted by the applicant. In

that connection, they pointed out that the TV presenter had simply described the events of the day on which the crime had occurred and had clearly stated that the investigation had been ongoing and that the public would have been informed of further developments.

2. The Court's assessment

39. The Court reiterates that Article 6 § 2 is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont v. France*, 10 February 1995, § 35, Series A no. 308, and *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 125, 22 May 2014). It not only prohibits the premature expression by the tribunal itself of the opinion that the person charged with a criminal offence is guilty before he has been so proved according to the law (see *Minelli v. Switzerland*, 25 March 1983, § 38, Series A no. 62), but also covers statements or actions made by other public officials about pending criminal investigations, which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Ürfi Çetinkaya v. Turkey*, no. 19866/04, § 139, 23 July 2013).

40. The Court stresses that Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38, and *Maksim Petrov v. Russia*, no. 23185/03, § 103, 6 November 2012).

41. Turning to the facts of the present case, the Court observes that only a few days after the applicant's arrest, on 1 August 2007, a television programme concerning his arrest on 24 July 2007 was broadcast on a private television channel. Despite the Court's explicit request to the Government for a copy of the video recording of that broadcast, they failed to fulfil that request. However, the Government did not dispute the content of the transcript of the broadcast submitted by the applicant (see paragraphs 21-22 above).

42. In that connection, the Court notes the Government's argument to the effect that the State could not be held responsible for the actions of the private media (see *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, § 48, 28 October 2004). However, it was not in dispute between the parties that the broadcast referred to by the applicant did not only contain narration by a TV presenter, but it also displayed the video recording of the meeting and dialogue between the applicant and R.A. on the day of the applicant's arrest, as well as the video recording of the applicant's arrest by the agents

of the MNS when he was taking money from R.A. In these particular circumstances, in the absence of any explanation from the Government as to the circumstances in which a private television channel managed to obtain the above-mentioned video recordings filmed by the law-enforcement authorities, which apparently never objected to their broadcast, the Court considers that the video contents of the broadcast are attributable to the respondent State because the private television channel in question could have obtained them only from the law-enforcement authorities.

43. In view of the above, the Court notes, without speculating on any possible collaboration between the law-enforcement authorities and the media, that this attitude of the law-enforcement authorities, which failed to take any action to protect the applicant's right to the presumption of innocence and to prevent him from being depicted as a criminal, was not compatible with the applicant's right to the presumption of the innocence (compare *Y.B. and Others*, cited above, § 50, and *Karadağ v. Turkey*, no. 12976/05, §§ 63-64, 29 June 2010). In particular, the Court considers that the broadcast of the above-mentioned video recordings must have encouraged the public to consider the applicant a criminal before he had been proved guilty under the law. Accordingly, the Court finds that there has been a breach of the presumption of innocence in his case.

44. There has accordingly been a violation of Article 6 § 2 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

45. Lastly the applicant complained, under Article 5 of the Convention, that the court hearings relating to the extension of his pre-trial detention had been held in his absence. The Court considers that this complaint falls to be examined under Article 5 § 4 of the Convention, which reads as follows:

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

46. The Government submitted that the applicant had failed to exhaust domestic remedies, in that he had not raised any complaint in respect of his or his lawyer's absence from the hearing before the first-instance court in his appeal against the Nasimi District Court's decision dated 19 October 2007. They further submitted that the applicant's lawyer, who had been present at the hearing of 31 October 2007 before the Baku Court of Appeal, also failed to raise any complaint concerning the applicant's absence from the hearings.

47. The applicant did not make any submissions in that connection.

48. The Court observes that it is clear from the applicant's appeal of 22 October 2007 that he did not complain about his or his lawyer's absence from the hearing of 19 October 2007 before the Nasimi District Court. It further appears from the transcript of the hearing of 31 October 2007 before the Baku Court of Appeal that the applicant's lawyer, who had been present at that hearing, failed to raise such a complaint before the appellate court. Moreover, the applicant did not argue that the available domestic remedy was ineffective or inaccessible.

49. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

1. Pecuniary damage

51. The applicant claimed 22,000 Azerbaijani manats (AZN) in respect of pecuniary damage. He submitted that his family had spent that sum on sending him food parcels in prison.

52. The Government asked the Court to reject the claim.

53. The Court does not find any causal link between the damage claimed and the violations found (see *Efendiyev v. Azerbaijan*, no. 27304/07, § 60, 18 December 2014, and *Yagublu v. Azerbaijan*, no. 31709/13, § 68, 5 November 2015). Accordingly, it rejects the applicant's claims in respect of pecuniary damage.

2. Non-pecuniary damage

54. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage. He claimed that amount for his unlawful detention and the harm to his health caused in detention.

55. The Government asked the Court to reject the claim, submitting that there was no evidence that the applicant's detention had caused harm to his health.

56. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 4,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

57. The applicant also claimed AZN 3,000 for the costs and expenses incurred in the proceedings before the domestic courts by two lawyers. He did not submit any documents in support of his claim. However, he submitted a contract with his representative before the Strasbourg Court, without formulating any claim for the costs and expenses incurred in the proceedings before the Court.

58. The Government considered that the claim for the costs and expenses incurred in the proceedings before the domestic courts was unsubstantiated and was not supported by documentary evidence. They also submitted that the applicant had failed to formulate any claim for the costs and expenses incurred in the proceedings before the Court.

59. 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. The Court also points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part (see *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017). In the present case the applicant failed to produce any documentary evidence in support of his claim for the costs and expenses incurred in the proceedings before the domestic courts. Moreover, although he produced a contract with his representative before the Strasbourg Court, no claim had been formulated in respect of the costs and expenses incurred in the proceedings before the Court. Therefore, the Court dismisses the claim for costs and expenses.

C. Default interest

60. The Court considers it appropriate that the default interest rate 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 complaints under Articles 5 § 3 and 6 § 2 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

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

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 18 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin Acting Deputy Registrar	André Potocki President