

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

FIFTH SECTION

CASE OF IBISHBEYLI v. AZERBAIJAN

(Application no. 45929/17)

JUDGMENT

STRASBOURG

23 June 2022

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



In the case of Ibishbeyli v. Azerbaijan,

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

Stéphanie Mourou-Vikström, *President,*
Ivana Jelić,
Kateřina Šimáčková, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 2 June 2022,

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

PROCEDURE

1. The case originated in an application against Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 June 2017.

2. The applicant was represented by Mr E. Sadigov, a lawyer based in Azerbaijan. The applicant complained under Article 5 § 3 of the Convention about the lack of justification for his pre-trial detention.

3. The Azerbaijani Government ("the Government") were given notice of the application.

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. On 30 June 2016 the applicant, a journalist, was arrested on suspicion of extortion of a large amount of money from a local businessman under a threat of publication of some discrediting information about his business and was charged under Article 182 (extortion) of the Criminal Code.

6. The applicant's pre-trial detention was ordered on 2 July 2016 by the Narimanov District Court for a period of four months, calculated from 30 June 2016.

7. On 7 and 14 September 2016, respectively, the Narimanov District Court and the Baku Court of Appeal dismissed the applicant's request to be put under house arrest or to be released on bail.

8. The applicant's pre-trial detention was extended on 25 October 2016 by the Narimanov District Court for a period of three months, until 30 January 2017.

9. In a separate decision issued on the same day the District Court dismissed the applicant's request to be put under house arrest or released on bail.

10. On 28 October 2016 the Baku Court of Appeal, final instance in these proceedings, dismissed, in two separate decisions, the applicant's appeals against the first-instance court's decisions of 25 October 2016.

11. No further decision concerning the extension of the applicant's pre-trial detention is available in the case file.

12. On 14 June 2017 the Baku Court of Serious Crimes found the applicant guilty under Article 182 (extortion) of the Criminal Code and sentenced him to seven years' imprisonment.

THE LAW

I. GOVERNMENT'S OBJECTION OF NON-COMPLIANCE WITH THE SIX-MONTH RULE

13. The Government submitted that the final domestic decision in respect of the applicant's complaint of the lack of justification for his pre-trial detention was the decisions of the Baku Court of Appeal dated 28 October 2016 upholding the first-instance court's decisions extending the applicant's pre-trial detention for three months and dismissing his request for the replacement of his pre-trial detention with either the house arrest or bail. These decisions were delivered to the applicant and his lawyer on 1 and 2 November 2016. Therefore, the starting date for the calculation of the six-month period would be 2 November 2016 and it would end on 2 May 2017. Considering that the present application was lodged with the Court on 20 June 2017, this complaint has been lodged belatedly and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

14. The applicant disagreed with the Government and submitted that the final domestic decision triggering the start of the six-month time-limit in respect of his complaint under Article 5 § 3 of the Convention was the Baku Court of Serious Crimes' judgment of 14 June 2017, finding him guilty under Article 182 (extortion) of the Criminal Code and sentencing him to seven years' imprisonment.

15. The Court reiterates that if an applicant has been detained pending trial under Article 5 § 3, the period to be taken into consideration starts when the person is arrested (see *Tomasi v. France*, 27 August 1992, § 83, Series A no. 241-A) or remanded in custody (see *Letellier v. France*, 26 June 1991, § 34, Series A no. 207), and ends when he or she is released and/or the charge is determined, even if only by a court of first instance (see, among other authorities, *Selahattin Demirtaş v. Turkey* (no. 2) [GC], 22 December 2020, § 290; *Solmaz v. Turkey*, no. 27561/02, §§ 23-24, 16 January 2007; and *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 61, 12 November 2015).

16. The Court observes that in the present case it is undisputed that the applicant was arrested on 30 June 2016 and remained in pre-trial detention until 14 June 2017, the date on which he was convicted by the Baku Court of Serious Crimes. Accordingly, the Court considers that the six-month time-limit concerning this complaint started running on 14 June 2017 and the

applicant, who lodged his application with the Court on 20 June 2017 complied with the six-month rule.

17. The Court therefore dismisses the Government's objection as regards the non-compliance with the six-month rule.

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

18. The applicant complained that the domestic courts had failed to justify the necessity for keeping the applicant in pre-trial detention. He relied on Article 5 § 3 of the Convention, which reads as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

19. The Court observes that the general principles regarding the right to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

20. In the leading cases of *Farhad Aliyev v. Azerbaijan,* no. 37138/06, 9 November 2010; *Zayidov v. Azerbaijan,* no. 11948/08, 20 February 2014; and *Isayeva v. Azerbaijan,* no. 36229/11, 25 June 2015, the Court already found a violation in respect of issues similar to those in the present case.

21. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the domestic courts failed to justify the need for the applicant's pre-trial detention.

22. These complaints are therefore admissible and disclose a breach of Article 5 § 3 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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."

24. Regard being had to the documents in its possession and to its case-law (see, in particular, *Farhad Aliyev,* cited above; *Zayidov*, cited above; and *Novruz Ismayilov v. Azerbaijan,* no. 16794/05, 20 February 2014), the Court considers it reasonable to award the sums indicated in the appended table.

25. The Court further 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 application admissible;

2. *Holds* that this application discloses a breach of Article 5 § 3 of the Convention concerning the lack of justification for pre-trial detention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amounts indicated in the appended table, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Stéphanie Mourou-Vikström President

APPENDIX

Application raising complaint under Article 5 § 3 of the Convention (lack of justification for pre-trial detention)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Length of detention	Specific defects	Amount awarded for non-pecuniary damage (in euros)[1]	Amount awarded for costs and expenses (in euros)[2]
45929/17 20/06/2017	**Fikrat Faramaz oglu IBISHBEYLI** 1976	Elchin SADIGOV Baku	30/06/2016 to 14/06/2017	11 months and 14 days	fragility of the reasons employed by the courts; use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice	3,000	500

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.