

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

FIRST SECTION

CASE OF IBRAHIMOV v. AZERBAIJAN

(Application no. 62271/16)

JUDGMENT

STRASBOURG

26 September 2024

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



In the case of Ibrahimov 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. 62271/16) 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 12 October 2016 by an Azerbaijani national, Mr Ikhtiyar Boyukkhan oglu Ibrahimov ("the applicant"), who was born in 1958, lives in Baku and was represented by Mr T. Khanaliyev, a lawyer practising in Baku;

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 5 September 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns a complaint under Article 6 §§ 1 and 3 (c) of the Convention about the alleged failure by the authorities to duly summon the applicant to attend a Supreme Court hearing in criminal proceedings against him.

2. By a judgment of 28 April 2014, the Baku Court of Serious Crimes sentenced the applicant to nine years' imprisonment for fraud with aggravating circumstances, under Article 178.3.2 of the Criminal Code.

3. On 7 July 2014 the Baku Court of Appeal upheld the first-instance court's judgment. Subsequently, the applicant lodged a cassation appeal. He did so without any legal assistance while he was serving his sentence at a penitentiary facility. In his cassation appeal, he argued that his conviction had been unfair.

4. The Supreme Court hearing was scheduled for 19 April 2016 and on 28 March 2016 the registry of the court sent the relevant notice to the penitentiary facility. On 6 April 2016 the penitentiary facility's officer G.S. signed a record confirming that he had received the notice.

5. On 19 April 2016 the Supreme Court hearing took place as scheduled. A representative of the prosecution and one of the aggrieved persons participated in it, while the applicant was absent. In the minutes of the hearing it was indicated that despite being duly notified, the applicant had not requested to participate in the hearing.

6. Eventually, the Supreme Court upheld the judgment of the Baku Court of Appeal.

7. In reply to a request of 29 August 2016 made by the applicant's representative Mr T. Khanaliyev, the chief of the penitentiary facility indicated that by a letter of 15 June 2016 the Supreme Court had been informed about a delivery to the applicant of the above-mentioned notice (see paragraph 5 above).

8. The applicant complained before the Court that his right to a fair trial guaranteed under Article 6 § 1 of the Convention had been breached, as he had not been informed of the hearing of his cassation appeal on 19 April 2016 before the Supreme Court and that therefore he had not been able to be present at that hearing.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

9. The applicant maintained his complaint as summarised in paragraph 8 above.

10. The Government argued that the applicant had been duly informed of the date and place of the hearing. They produced a copy of the notice and the record mentioned in paragraph 4 above.

11. While the Court notes that the complaint was communicated under both Article 6 § 1 and Article 6 § 3 (c) of the Convention, it will consider the case only under Article 6 § 1.

12. The Court notes that the applicant's 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.

13. The general principles concerning the presence of a defendant at trial have been summarised in *Vyacheslav Korchagin v. Russia* (no. 12307/16, §§ 64-65, 28 August 2018), *Abbasov v. Azerbaijan* (no. 24271/05, §§ 29-33, 17 January 2008), *Maksimov v. Azerbaijan* (no. 38228/05, §§ 35-42, 8 October 2009), and *Mammad Mammadov v. Azerbaijan* (no. 38073/06, §§ 30-33, 11 October 2011).

14. In the present case, the Court notes that it was undisputed by the parties that on 19 April 2016 the Supreme Court had heard the applicant's cassation appeal in his absence. The parties, however, disagreed as to whether the applicant had been duly informed of that hearing in advance.

15. Although the Government submitted a copy of the record (see paragraph 4 above) signed by the penitentiary facility's officer confirming that he had received the notice on 6 April 2016, there is no evidence that the notice had actually been delivered to the applicant. Similarly, the letter of the chief of the penitentiary facility (see paragraph 7 above) did not contain any evidence in that regard. In these circumstances, the Court is not persuaded by

the evidence submitted by the Government in support of their contention that the applicant had been duly summoned to the hearing (compare *Abbasov*, cited above, § 29, and *Maksimov*, cited above, § 37).

16. The Court also notes that due to the lack of notice about the Supreme Court's hearing of 19 April 2016, the applicant was also deprived of an opportunity to present his defence through a lawyer, if he had wished to do so (compare *Abbasov*, § 33; *Maksimov*, § 41; and *Mammad Mammadov*, § 33, all cited above).

17. The Court notes lastly that the minutes of the hearing of 19 April 2016 indicated that the applicant had been "duly notified" about the hearing (see paragraph 5 above). However, there is no indication in the case-file material that the Supreme Court, while deciding to proceed with the hearing in the applicant's absence, checked whether the notice had indeed been served on him. The decision of the Supreme Court was silent on the issue of the applicant's absence from the hearing.

18. In view of the above, the Court concludes that the applicant's right to be informed of the court hearing in question was not respected. He was not afforded an opportunity to exercise his right to attend, to make oral submissions, to choose another way of participating in the proceedings or to ask for an adjournment.

19. There has accordingly been a violation of Article 6 § 1 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

Done in English, and notified in writing on 26 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President