

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

FIRST SECTION

CASE OF MAJIDLI v. AZERBAIJAN

(Application no. 7218/13)

JUDGMENT

STRASBOURG

16 February 2023

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



In the case of Majidli v. Azerbaijan,

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

Krzysztof Wojtyczek*, President*,
Lətif Hüseynov,
Ivana Jelić*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 7218/13) 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 30 December 2012 by an Azerbaijani national, Mr Elnur Arzuman oglu Majidli (*Elnur Arzuman oğlu Məcidli* - "the applicant"), who was born in 1989 and was represented by Mr I. Aliyev and Mr K. Bagirov, lawyers based in Azerbaijan;

the decision to give notice of the complaints concerning the alleged unfairness of criminal proceedings against the applicant (Article 6 §§ 1 and 3 of the Convention) and the alleged hindrance to the exercise of his right of individual petition (Article 34 of the Convention) to the Azerbaijani Government ("the Government"), represented by their Agent, Mr Ç. Əsgərov, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 24 January 2023,

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

SUBJECT MATTER OF THE CASE

1. The present application concerns the criminal conviction of the applicant for active participation in actions causing a breach of public order following his participation in an unauthorised peaceful demonstration.

2. According to the applicant, the organisers had given prior notice of a demonstration planned for 2 April 2011 to the relevant authorities. However, the authorities had refused to authorise the demonstration at the place indicated by the organisers. The applicant had participated in the demonstration, which had been intended to be peaceful and had been conducted in a peaceful manner. It was dispersed by the police.

3. On 11 May 2011 the applicant was arrested. According to the applicant, on that date he was first summoned and questioned as a witness. Then he took part in an identification parade at which two police officers, S.D. and N.A., declared that they recognised him, testifying that he had broken a pharmacy window during the demonstration on 2 April 2011. All those procedures were conducted without the participation of a defence lawyer. Later, a State-funded lawyer was appointed for the applicant.

4. On 13 May 2011 the applicant was formally charged with a criminal offence under Article 233 of the Criminal Code (active participation in actions causing a breach of public order).

5. On 10 October 2011 the Nasimi District Court convicted the applicant under Article 233 of the Criminal Code and sentenced him to two years' imprisonment. In the course of the court proceedings, the applicant pleaded not guilty, stating that he had not broken the pharmacy window and had participated peacefully in the demonstration. It appears from the judgment that after having declared the applicant's identification by S.D. inadmissible in evidence, since S.D. had been shown his photograph prior to the identification parade, the court relied on the following evidence for finding the applicant guilty.

(a) The police officer N.A., who attended one hearing, testified that during the demonstration, a slightly stout man of average height aged between 22 and 26 had thrown something towards a pharmacy and had run away and that the police had not been able to catch that protester. N.A. further stated that the protester was the applicant, and that he had recognised him during the identification parade. The applicant was not given an opportunity to question N.A.

(b) The trial court examined video recordings of the demonstration and heard a number of prosecution witnesses who gave a general description of the events of 2 April 2011. Some prosecution witnesses, including the owner of the pharmacy and the persons working in the neighbourhood at that time, stated that during the demonstration someone had broken the pharmacy window.

(c) Two witnesses for the applicant testified that they had been with the applicant during the demonstration and that he had not broken the pharmacy window. The court dismissed the testimony of those witnesses as biased, without explaining its reasons.

6. The applicant lodged an appeal against that judgment, complaining that the first-instance court's judgment lacked adequate reasoning; that his rights to equality of arms and adversarial proceedings had been breached; that his criminal conviction had been based mainly on the statement of N.A. but he had not been given an opportunity to question him; and that during the initial stage of the pre-trial questioning he had been deprived of legal assistance.

7. On 1 December 2011 the Baku Court of Appeal dismissed the applicant's appeal and upheld the first-instance court's judgment, finding it justified. The appellate court made no mention of the applicant's specific complaints.

8. The applicant lodged a cassation appeal, reiterating his previous complaints and arguments.

9. On 3 July 2012 the Supreme Court upheld the appellate court's judgment.

10. On 8 August 2014 criminal proceedings were instituted against Mr Aliyev, who represented the applicant before the Court. Those criminal proceedings were the subject of a separate application lodged by him with the Court (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, 20 September 2018). On 8 and 9 August 2014 the investigating authorities seized a large number of documents from Mr Aliyev's office, including all the case files relating to applications pending before the Court which were in the possession of Mr Aliyev as a representative. The file relating to the present case was also seized in its entirety. The facts relating to the seizure and the relevant proceedings are described in more detail in *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 21-28, 22 October 2015).

11. The applicant complained that his rights protected under Article 6 §§ 1 and 3 of the Convention had been breached by the domestic authorities and that, under Article 34, there had been a hindrance to the exercise of his right of individual petition.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

12. The applicant complained under Article 6 §§ 1 and 3 of the Convention that the domestic courts' decisions had lacked adequate reasoning; that he had not been given an opportunity to question the main prosecution witness, the police officer, N.A.; that during the initial stage of the pre-trial questioning he had been deprived of legal assistance; and that the criminal proceedings against him, taken as a whole, had been unfair.

13. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

14. The principles relevant to the present complaints are summarised in *Gafgaz Mammadov v. Azerbaijan* (no. 60259/11, §§ 74-75, 83-84, 88-89, 91 and 93, 15 October 2015).

15. The Court observes that the first-instance court convicted the applicant of active participation in actions causing a breach of public order on the grounds that he had broken the window of a pharmacy during the demonstration of 2 April 2011. While it was undisputed in the domestic proceedings that the pharmacy window had been broken during the demonstration, it appears from the documents in the case file that the police officer N.A. was the only person among numerous witnesses questioned at the court hearings, including the owner of the pharmacy and persons working in the neighbourhood at the time, who identified the applicant as the person who had broken that window. Moreover, two witnesses clearly stated that they had been present at the incident and that the applicant was not the person who had broken the window. However, the first-instance court failed to

provide any reasons why it considered the witness statement of the police officer N.A. more objective and reliable than those of the applicant and the two other witnesses. In that connection, the Court notes that the trial court dismissed the testimony of those two witnesses as biased without providing any explanation. The Court also does not overlook the fact that the applicant was not given an opportunity to question N.A., who was summoned to the trial in his capacity as a witness and attended one hearing, making his statement and leaving the courtroom without being cross-examined by the applicant.

16. The Court also notes that the applicant's arguments before the first-instance court concerned both the factual circumstances and the legal issues in his case. The applicant consistently argued that he had been arrested for participating in a peaceful demonstration. In particular, he argued that the law did not require authorisation to hold a public assembly and that he had participated peacefully in the demonstration. It appears that those arguments were both important and pertinent. Nevertheless, the first-instance court ignored them altogether. Furthermore, none of the defects of the original trial were remedied by either the Court of Appeal or the Supreme Court. The higher courts also ignored the applicant's requests that N.A. attend so that he could question him, without providing any reasons. Both courts merely reiterated the first-instance court's findings and did not address the numerous complaints made by the applicant concerning the various defects in the trial, summarily rejecting those complaints without giving any reasoning.

17. The Court has previously held, in examining the fairness of criminal proceedings, that by ignoring a specific, pertinent and important point made by the accused, domestic courts 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 in conformity with the guarantees of a fair hearing.

18. Furthermore, having regard to the above finding of a violation of Article 6 § 1 of the Convention, the Court considers that in the particular circumstances of the present case it is unnecessary to rule whether the applicant's right to defend himself through legal assistance was violated at the initial stage of the pre-trial questioning (see *Hajili and Others v. Azerbaijan* [Committee], nos. 44699/13 and 2 others, § 61, 29 June 2017; *Mirzayev and Others v. Azerbaijan* [Committee], nos. 12854/13 and 2 others, § 30, 20 July 2017; and *Agayev v. Azerbaijan* [Committee], no. 66917/11, § 25, 14 May 2020).

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

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

20. On 9 September 2014 the applicant's representative, Mr I. Aliyev, lodged a new complaint on the applicant's behalf, arguing that the seizure from his office of the entire case file relating to the applicant's pending application before the Court had amounted to a hindrance to the exercise of the applicant's right of individual petition under Article 34 of the Convention.

21. The submissions made by the applicant and the Government were identical to those made by the parties in respect of the same complaint raised in the case of *Annagi Hajibeyli v. Azerbaijan* (no. 2204/11, §§ 57-60, 22 October 2015).

22. In *Annagi Hajibeyli* (ibid., §§ 64-79), having examined an identical complaint based on similar facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention. The Court considers that its analysis and findings in *Annagi Hajibeyli* also apply to the present application and sees no reason to reach a different conclusion in the present case.

23. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. The applicant claimed 7,134 euros (EUR) in respect of pecuniary damage, EUR 35,000 in respect of non-pecuniary damage and EUR 5,004 in respect of costs and expenses incurred before the domestic courts and before the Court. The applicant submitted contracts with his representatives in support of his claim and asked that the compensation in that connection be paid directly into the bank account of his representative, Mr K. Bagirov.

25. The Government submitted that those amounts were unsubstantiated and excessive.

26. The Court does not see any causal link between the damage claimed in respect of pecuniary damage and the violation found.

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

28. Having regard to the documents in its possession, the Court considers it reasonable to award the applicant EUR 750 to cover costs and expenses under all heads, plus any tax that may be chargeable to the applicant, to be paid directly into the bank account of his representative, Mr K. Bagirov.

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;

3. *Holds* that the respondent State has failed to comply with its obligations under Article 34 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 750 (seven hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of his representative, Mr K. Bagirov;

(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 claim for just satisfaction.

Done in English, and notified in writing on 16 February 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President