

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

FIRST SECTION

CASE OF SAVALANLI v. AZERBAIJAN

(Application no. 70919/12)

JUDGMENT

STRASBOURG

19 September 2024

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



In the case of Savalanli 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. 70919/12) 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 29 May 2012 by an Azerbaijani national, Mr Jabbar Novruz oglu Savalanli (*Cabbar Novruz oğlu Savalanlı* – "the applicant"), who was born in 1991, lives in Sumgayit and was represented by Mr I. Aliyev, Mr A. Mustafayev and Mr A. Gasimov, lawyers based in Azerbaijan;

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 29 August 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged unfairness of criminal proceedings brought against the applicant on charges of drug possession.

2. The circumstances relating to the applicant's arrest and detention are described in *Savalanli and Others v. Azerbaijan* (nos. 54151/11 and 3 others, §§ 5-17, 15 November 2022).

3. On 5 February 2011 at around 8.30 p.m. the applicant was arrested in front of the building where he resided by plain-clothed police officers on the basis of operational information that he was in possession of drugs. He was taken to the Sumgayit City Police Office ("the SCPO"), where he was searched in the presence of two police officers and two attesting witnesses. According to the record of the search, it was carried out at 9 p.m. on 5 February 2011. It appears from the record that the applicant was not represented by a lawyer. During the search, drugs (opium) were found on the applicant's person.

4. At 2.45 a.m. on 6 February 2011 a police investigator drew up the record of the applicant's arrest without a lawyer present.

5. On 7 February 2011 the applicant was charged with a criminal offence under Article 234.1 of the Criminal Code (illegal possession of a quantity of narcotic substances exceeding that necessary for personal use without intent to sell) and the Sumgayit City Court ordered his detention for a period of two months.

6. On 24 February 2011 medical forensic opinion no. 379 was drawn up, which stated that the applicant showed no signs of drug addiction but drug use could not be ruled out.

7. On 2 April 2011 the investigator issued a bill of indictment under Article 234.1 of the Criminal Code and filed it with the Sumgayit City Court.

8. During the proceedings in the first-instance court, the applicant insisted that the drugs had been planted on him by the police and asked the court to exclude the search record from the list of evidence as the search had been carried out unlawfully. He also contested the reliability of medical forensic opinion no. 379, arguing that it had been unlawful and unjustified.

9. On 4 May 2011 the Sumgayit City Court found the applicant guilty under Article 234.1 of the Criminal Code and sentenced him to two years and six months' imprisonment. It based its conviction, primarily, on the evidence stemming from the record of the search carried out on him and from medical forensic opinion no. 379. The judgment made no mention of the applicant's specific complaints about the conditions in which the search had been carried out or the lawfulness of the use against him of the evidence obtained in such circumstances.

10. The applicant appealed, reiterating his arguments.

11. On 26 July 2011 the Sumgayit Court of Appeal upheld the judgment of the first-instance court. The appellate court's judgment was silent as to the applicant's specific complaints that the drugs had been planted on him and as to the conditions in which the search had been carried out.

12. On 29 November 2011 the Supreme Court upheld the appellate court's judgment.

13. The applicant was released from serving the remainder of his sentence by a presidential pardon granted on 26 December 2011.

14. He complained that the criminal proceedings against him had been in breach of Article 6 of the Convention because he had been convicted on the basis of planted evidence and had not been given an opportunity to challenge that evidence in an effective manner.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

15. 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.

16. The general principles applicable to the present case have been summarised in *Sakit Zahidov v. Azerbaijan* (no. 51164/07, §§ 46-49, 12 November 2015).

17. The Court observes that it found in the applicant's previous case, concerning his arrest and detention within the framework of the same

criminal proceedings, that his deprivation of liberty had not constituted a "lawful detention" effected "on reasonable suspicion" of his having committed a criminal offence (see *Savalanli and Others*, cited above, §§ 84-95). Although the legal issues to be examined in the present case under Article 6 of the Convention are different from those already examined under Article 5, both the previous case and the present case concern the same criminal proceedings against the applicant involving the same charges stemming from the same events, and a considerable part of the Court's findings in the previous case are equally pertinent to the present case (compare *Rustamzade v. Azerbaijan (no. 2)*, no. 22323/16, § 36, 23 February 2023). In particular, the Court cannot overlook its findings in the previous case that the lapse of time between the arrest and the search of the applicant raised legitimate concerns about the possible "planting" of evidence, because he was completely under the control of the police during that time (see *Savalanli and Others*, cited above, § 91).

18. Turning to the particular circumstances of the present case, the Court observes at the outset that, although the domestic courts referred to medical forensic opinion no. 379 when convicting the applicant, in which the experts concluded that drug use could not be ruled out, the applicant was not convicted of drug use, but of illegal possession. In these circumstances, even assuming that the applicant had used drugs as indicated in the opinion, it has not been established that this could have constituted a basis for his conviction for illegal possession of a quantity of narcotic substances exceeding that necessary for personal use without intent to sell. The Court accordingly considers that the drugs found on him was the central evidence against him (compare *Sakit Zahidov*, cited above, § 51).

19. In these circumstances, the Court will examine, firstly, the quality of the physical evidence, including whether the circumstances in which it was obtained cast doubt on its reliability or provenance and, secondly, whether the applicant was given the opportunity to challenge its provenance and its use in the domestic proceedings (see *Bykov v. Russia* [GC], no. 4378/02, § 90, 10 March 2009).

20. With regard to the first question, the Court observes that the search of the applicant was not carried out immediately following his arrest at 8.30 p.m. on 5 February 2011. It took place at 9 p.m., 30 minutes later, at the SCPO, nowhere near his place of arrest and while he was under the complete control of the police. In this connection, the Court reiterates that the police's failure to conduct a search immediately following an arrest without good reason raises legitimate concerns about the possible "planting" of evidence (see *Layijov v. Azerbaijan*, no. 22062/07, § 69, 10 April 2014). Moreover, there is nothing to suggest that there were any special circumstances rendering it impossible to carry out a search immediately after the applicant's arrest.

21. The Court also cannot overlook the fact that the applicant's arrest was not immediately documented by the police. In particular, although he was

arrested by the police at 8.30 p.m. on 5 February 2011, an official record of the arrest was not drawn up until 2.45 a.m. on 6 February 2011 (see paragraph 4 above). It further appears that the applicant was not represented by a lawyer during his arrest and the search at the SCPO.

22. Having regard to the above, the Court considers that the quality of the physical evidence on which the domestic courts' guilty verdict was based is questionable because the manner in which it was obtained casts doubt on its reliability.

23. As to the second question, the Court observes that the applicant specifically raised the matter of the provenance of the physical evidence and its use against him before all the domestic courts. However, it was not properly considered by them as their judgments were silent on this point (see *Sakit Zahidov*, cited above, § 56). In particular, they failed to examine why a search of the applicant had not been immediately conducted at the place of his arrest and whether the search had been conducted in compliance with the procedural requirements (compare *Layijov*, cited above, § 74). The Court therefore cannot but conclude that the applicant was not given the opportunity to properly challenge the provenance of the physical evidence before the domestic courts since they ignored his complaints in the regard.

24. In view of the fact that the physical evidence found on the applicant's person was the central evidence on which his final criminal conviction was based, the Court considers that the foregoing considerations are sufficient to enable it to conclude that the manner in which the physical evidence used at trial against the applicant was obtained, and the domestic courts' failure to address his objections and justified arguments regarding the provenance of that evidence and its use against him, rendered the proceedings as a whole unfair (see *Sakit Zahidov*, § 58, and *Layijov*, § 76, both cited above).

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses incurred before the Court.

27. The Government contested those amounts as excessive and unsubstantiated.

28. Ruling on an equitable basis, the Court awards the applicant the sum of EUR 4,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

29. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 500 for costs and expenses in the proceedings before it, plus any tax that may be chargeable to the applicant, to be paid directly to the applicant's representative, Mr I. Aliyev.

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*
   (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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to the applicant's representative, Mr I. Aliyev;
   (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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 September 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt Deputy Registrar	Krzysztof Wojtyczek President