



## Multiple violations of the European Convention in case of unacknowledged detention and ill-treatment of Azerbaijani academic

The case [Mammadov and Others v. Azerbaijan](#) (application no. 35432/07) concerned an Azerbaijani academic who complained that he had been arrested in 2007, held in unacknowledged detention for 24 hours and then sentenced to 15 days' administrative detention which he had spent in a location unknown either to his family or lawyer. He alleged that he had been ill-treated during that period and had not been provided with medical care for high blood pressure, prostatitis and an overactive thyroid. He also complained that he had then spent over a year in pre-trial detention without a proper justification until his conviction of high treason and sentencing to 10 years' imprisonment. He died in detention in 2009 of a heart attack.

In today's **Chamber** judgment<sup>1</sup> in the case the European Court of Human Rights held, by four votes to three, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights as regards Mr Mammadov's ill-treatment between 2 and 17 February 2007.

It also held, unanimously, that there had been:

**a violation of Article 3** of the European Convention because he had been deprived of medical care between 2 and 17 February 2007:

**a violation of Article 3** concerning the lack of an effective investigation into his allegation of ill-treatment;

**a violation of Article 5 § 1 (right to liberty and security)** because the first 24 hours of his detention had not been recorded;

**a violation of Article 5 § 3 (entitlement to trial within a reasonable time or to release pending trial)** because the authorities had failed to give "relevant" and "sufficient" reasons to justify his pre-trial detention between February 2007 and June 2008;

**no violation of Article 2 (right to life)** as concerned his death in detention; and

**a violation of Article 2** as concerned the authorities' failure to conduct an effective investigation into his death.

### Principal facts

The applicants are Novruzali Khanmammad oglu Mammadov, who was born in 1942, his wife, Maryam Aliaga gizi Mammadova, and their son, Emil Novruzali oglu Mammadov. They are/were Azerbaijani nationals.

The case concerned the first applicant, who was an academic specialising in the Talysh language and editor-in-chief of an Azerbaijani-Talysh newspaper, and his complaints about unlawful detention and

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

ill-treatment by officers of the Ministry of National Security ("the MNS") in 2007 as well as his subsequent pre-trial detention. He died in detention in 2009 and his wife and son continued the proceedings in his stead, lodging a further complaint concerning his death. The son died in 2011 and his mother continued the proceedings.

Mr Mamamadov was arrested by MNS officers on 2 February 2007 in a park in Baku and taken for questioning about alleged collaboration with the Iranian intelligence service. He was released 24 hours later near a metro station, but was immediately re-arrested by the police for refusing to identify himself. He was taken before a judge the same day, found guilty of failing to comply with a lawful order by a police officer and sentenced to 15 days' administrative detention.

Just before his due release date, he was charged with high treason and placed in pre-trial detention for three months. The courts extended his detention over the next year and four months on the grounds of the seriousness of the charges and the possibility that he might abscond or obstruct the investigation. The courts also later cited the need for more time to carry out the investigation. Mr Mammadov's requests to be released because of his age and the fact that he had a permanent place of residence were not examined.

The case went to trial in November 2007. He was convicted in June 2008 and sentenced to ten years' imprisonment.

In the meantime, Mr Mammadov himself, his lawyer and his family had raised several complaints before the authorities and courts alleging unlawful detention and ill-treatment.

Mr Mammadov's wife and lawyer both requested a medical examination after noticing that he had a bruised hand during the administrative hearing of 3 February 2007. An investigator ordered an examination in April 2007, which, however, recorded no sign of any injury on his body. Mr Mammadov's family tried to find out where he was being held after his administrative conviction by sending letters and telegrams to the law-enforcement authorities and the courts, in vain.

Mr Mammadov himself alleged in the various court proceedings that he had not been provided with any document concerning either his arrest or the first 24 hours of his detention and that he had been ill-treated during that time. According to him, the abuse had then continued during his administrative detention when he was taken back to the MNS premises. In particular he stated that MNS agents had crushed his fingers with a chair, struck the left side of his rib cage, injuring his shoulder, had subjected him to unrecorded interviews at night and had told him alarming but false information about his family. He also asserted that he had not been allowed to use the toilet during questioning, even though he had told the investigator he suffered from prostatitis, and had been obliged to urinate in his trousers. He had not been provided with medical care for his illnesses, which also included hypertension and an overactive thyroid.

No criminal investigation has been carried out into these complaints. The domestic courts which ordered Mr Mammadov's pre-trial detention ignored his allegations, while the same complaints brought in separate proceedings in October 2007 were dismissed as unsubstantiated. The courts never addressed his complaint of unlawful detention.

During his detention Mr Mammadov was examined by doctors on numerous occasions in 2007 and 2008 on account of his ill health. Between March and July 2009 he refused to be transferred to a specialist medical facility because he said he could not afford it and, in any case, doubted the quality of the care there. He eventually accepted a transfer at the end of July 2009 and was seen by a number of specialists, but died on 17 August 2009.

The prosecuting authorities immediately launched an enquiry into his death, but refused to institute criminal proceedings because of a lack of evidence of a crime. They based their decision on two reports concluding that Mr Mammadov had died from a heart attack and that this had not been related to his medical care, which had been adequate. The domestic courts upheld this decision.

## Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Mr Mammadov complained in particular that his detention between 2 and 3 February 2007 had been unlawful and that the domestic courts had failed to justify his subsequent pre-trial detention or examine his arguments in favour of his release. Also relying on Article 3 (prohibition of inhuman or degrading treatment), he alleged that he had been ill-treated by MNS officers between 2 and 17 February 2007 and that the authorities had failed to investigate his allegation. He also alleged that he had not been provided with medical care during that period of his detention. Lastly, his wife and son alleged that he had died in detention owing to inadequate medical care, notably the delay in his transfer to a specialised medical facility, and that there had been no effective investigation into his death, in breach of Article 2 (right to life).

Mr Mammadov's original application was lodged with the European Court of Human Rights on 13 August 2007. The application lodged by his wife and son, which was added to the original application, was lodged on 11 May 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,  
Yonko **Grozev** (Bulgaria),  
André **Potocki** (France),  
Mārtiņš **Mits** (Latvia),  
Gabriele **Kucsko-Stadlmayer** (Austria),  
Lətif **Hüseynov** (Azerbaijan),  
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 5 § 1 (unrecorded detention)

While Mr Mammadov had consistently complained of unlawful detention between 2 and 3 February 2007 on the MNS premises in the various court proceedings in his case, the Government had failed to provide any evidence to rebut his allegation. As for the domestic courts, they had never addressed that part of his complaint.

The Court therefore considered that Mr Mammadov's version of events was plausible and accepted that he had been detained for 24 hours as alleged. That detention had not been documented at all, which amounted to a particularly grave violation of Article 5 of the Convention.

### Article 5 § 3 (pre-trial detention for more than one year without proper justification)

The Court concluded that the authorities had failed to give "relevant" and "sufficient" reasons to justify Mr Mammadov's pre-trial detention between February 2007 and June 2008. In particular, the first-instance and appellate courts had used a standard template when ordering and extending his pre-trial detention, without giving any reasons why the grounds cited in the template had been relevant to the specific circumstances of Mr Mammadov's case. The courts had even substantiated their decisions on the basis of a completely irrelevant and unacceptable reason for detaining a person, namely the need for more time to complete the investigation.

### Article 3 (ill-treatment and investigation)

The Court accepted Mr Mammadov's version of events concerning his ill-treatment by MNS officers between 2 and 17 February 2007, which had been detailed and for the most part consistent and

plausible. Even though he had not presented any medical evidence, the Court observed that that had been because he had been detained during that period at an undisclosed location without any access to the outside world. The first 24 hours of his detention had been unrecorded and, again according to his consistent and plausible submissions, he had then been detained until 17 February 2007 without his family or lawyer knowing his whereabouts. Moreover, his statement alleging ill-treatment had been supported by witness evidence, albeit from his lawyer and family, about injuries on his hand at the administrative hearing on his case.

The Court also accepted Mr Mammadov's submission that he had not been provided with adequate medical care. It was clear that neither his lawyer nor his family could have brought him the necessary medication as they had not been informed of his place of detention.

The Government, on the other hand, had failed to submit information or evidence to call into question Mr Mammadov's allegations of ill-treatment by the MNS officers or to show that he had been provided with care and/or medication. That was despite the fact that the events complained of were exclusively within the authorities' knowledge.

The Court therefore concluded that Mr Mammadov had been subjected to ill-treatment in that he had both been abused by the MNS officers and deprived of medical care. Given his advanced age and vulnerable state of health, that ill-treatment had to have caused him physical pain and considerable mental suffering, diminishing his human dignity. The ill-treatment, exacerbated by a lack of access to the outside world, had been serious enough for it to be considered inhuman and degrading, in violation of Article 3 of the Convention.

Lastly, the Court held that there had been a further violation of Article 3 as concerned the investigation into his allegations of ill-treatment. No criminal investigation had ever been carried out despite Mr Mammadov having raised very specific complaints as to the date, time and nature of his ill-treatment. The authorities had ordered a medical examination, but that only had been two months after the events, when any signs of injury could have already disappeared. As there had been no criminal investigation, Mr Mammadov, his lawyer and family, the MNS officers and any other possible witnesses had never been questioned by an investigator. Similarly, such witnesses had never been heard by the courts which had either ignored Mr Mammadov's allegations of ill-treatment or had dismissed them as unsubstantiated.

## Article 2 (death in detention and investigation)

As concerned Mr Mammadov's death in detention, the Court noted that his wife and son did not dispute the fact that he had twice refused to be transferred to the medical facility between March and July 2009. They argued that he had refused such a transfer because of his financial situation and the quality of the medical care in the facility.

The Court could not accept that argument as under domestic law prisoners were given free medical care and there had been no evidence in the case file that money had been demanded for his transfer or that the care in the medical facility had been lacking. The Court therefore concluded that the authorities had not been responsible for the delay in Mr Mammadov's transfer to the medical facility and had done everything possible to try to avert his death. Moreover, although Mr Mammadov had had high blood pressure and prostatitis, he had not been suffering from a potentially life-threatening disease. There had accordingly been no violation of Article 2 under the substantive aspect.

However, it found that the authorities had failed to carry out an effective investigation into his death. The decision not to begin a criminal investigation had been based on reports which had only taken into account the cause of death and the medical care after his transfer to the medical facility, and not what consequences the delay in transferring him could have had. In addition, the prosecuting authorities had not looked into why he had refused to be transferred. Nor had they clarified if there had been a link between his death and his placement in a punishment cell for 15 days in January 2009. Lastly, they had not informed his wife and son of any progress in the

investigation or involved them in it in any way. There had therefore been a violation of Article 2 under the procedural aspect.

### Article 41 (just satisfaction)

The Court held that Azerbaijan was to pay the Ms Mammadova 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,000 in respect of costs and expenses.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.