



## Serious shortcomings in the criminal proceedings against Azerbaijani opposition politician, Ilgar Mammadov

The case concerned the criminal proceedings brought against a prominent Azerbaijani opposition politician, Ilgar Eldar oglu Mammadov, following protests in the town of Ismayilli in 2013. Mr Mammadov was subsequently charged and convicted of mass disorder. This is the second case he has brought before the European Court of Human Rights; the first concerned his arrest and pre-trial detention following the same events.

In today's **Chamber** judgment<sup>1</sup> in the case of [Ilgar Mammadov v. Azerbaijan \(No. 2\)](#) (application no. 919/15) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.**

The Court found that the domestic courts had either not addressed or remained silent about a number of inconsistencies in the evidence used to convict Mr Mammadov, despite the defence's repeated objections about flawed or misrepresented evidence. In particular, as concerned the witness statements for the prosecution: some of the police officers who testified that Mr Mammadov had incited protestors to violence had only been questioned five months after the protests and one had retracted his pre-trial statement saying that he had signed it without even reading it. As concerned certain video recordings used to convict him: one had shown clashes between protestors whereas another had shown footage of calm streets with very few protestors. Furthermore, Mr Mammadov's blog posts and social media posts as well as a transcript of a radio interview, used to prove that he had planned the mass disorder, had dated either from when he had been in Ismayilli or after leaving it, and had contained no incitement to violence. Indeed, in the news coverage on the riots, which the courts found to be in support of the prosecution's case, there had been no express reporting of any actual outbreak of violence during the afternoon of 24 January 2013 when Mr Mammadov had been present in Ismayilli.

In conclusion, there had been serious shortcomings in the manner in which the evidence used to convict Mr Mammadov had been admitted, examined and/or assessed. Equally, the manner in which the courts had dealt with the defence's objections concerning that evidence had been inadequate. Indeed, any evidence favourable to him had been systematically dismissed in an inadequately reasoned or manifestly unreasonable manner.

### Principal facts

Ilgar Eldar oglu Mammadov, an Azerbaijani national born in 1970, is currently serving a seven-year prison sentence following his conviction in 2014 of mass disorder.

Mr Mammadov has a history of criticising the Azerbaijani Government and had announced his intention to stand as candidate in the November 2013 presidential elections. However, he was unable to do so because he was arrested and placed in pre-trial detention following protests in the town of Ismayilli on 24 January 2013. He was in particular accused of organising public disorder

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).

(subsequently replaced with the charge of mass disorder) and violent resistance to the police, apparently for having told protestors to throw stones at the police.

In March 2014 Mr Mammadov was convicted as charged at first instance. After a series of appeals, his conviction and sentence were eventually upheld in November 2016 by the Supreme Court. In convicting him, the domestic courts essentially relied on statements by witnesses for the prosecution (mainly police officers testifying that they had seen Mr Mammadov organising and inciting the protestors to violence and that they had then themselves been attacked), letters written by the law-enforcement authorities (accusing Mr Mammadov of having incited the local Ismayilli residents against the State, government bodies and the police), video recordings and contemporaneous news coverage. In addition, the courts relied on Mr Mammadov's blog posts and social media posts as well as a transcript of an interview with Azadliq Radio, all allegedly showing that he had planned the mass disorder. The courts dismissed the statements of all the defence witnesses (most of them journalists) as untruthful, finding that they knew Mr Mammadov personally and therefore wanted to help him. Throughout the proceedings Mr Mammadov repeatedly complained about flawed or misrepresented evidence, which were all dismissed.

Mr Mammadov has lodged a previous application with the European Court of Human Rights to complain about his arrest and pre-trial detention following the Ismayilli riots. In 2014 the Court delivered a judgment, [Ilqar Mammadov v. Azerbaijan](#) (no. 15172/13), finding that Mr Mammadov had been arrested and detained without any evidence to reasonably suspect him of having committed a criminal offence and concluding that the actual purpose of his detention had been to silence or punish him for criticising the Government. The enforcement of this judgment, in particular with regard to Mr Mammadov's release, is still currently underway before the Committee of Ministers of the Council of Europe.

## Complaints, procedure and composition of the Court

In the present application, Mr Mammadov complained under Article 6 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy) about a number of defects in the criminal proceedings against him.

He alleged in particular: that the judgment against him had been ill-reasoned and that his conviction had been based on flawed and manifestly wrongly assessed evidence; that the domestic courts had not duly examined the defence's objections and requests concerning the admission of evidence and conduct of the proceedings; that the defence had not been given proper access to the transcripts of the trial hearings, either before or after the trial, and had not been allowed to use laptop and tablet computers during the trial hearings; that his lawyers had been harassed, one of them eventually even having been disbarred; and that the entire proceedings had lasted too long.

He also made a number of other complaints under Article 14 (prohibition on discrimination), Article 17 (prohibition of abuse of rights) and Article 18 (limitation on use of restrictions on rights) in conjunction with Article 6, alleging that the proceedings against him had been discriminatory because he is an opposition politician and had been used to remove him from the political stage.

The application was lodged with the European Court of Human Rights on 19 December 2014.

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

Angelika **Nußberger** (Germany), *President*,  
Erik **Møse** (Norway),  
Nona **Tsotsoria** (Georgia),  
Yonko **Grozev** (Bulgaria),  
Síofra **O'Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),

Lətif Hüseynov (Azerbaijan),

and also Milan Blaško, *Deputy Section Registrar*.

## Decision of the Court

### Article 6 (right to a fair hearing within a reasonable time)

The criminal proceedings against Mr Mammadov had lasted slightly longer than three years and nine months at three levels of judicial instance; the higher two instances (the Court of Appeal and the Supreme Court) had examined the case two times each. Given the complexity of the case, the Court considered that the overall length of the proceedings had not been excessive and therefore declared that part of Mr Mammadov's complaint inadmissible.

However, the Court found that there had been serious shortcomings in the domestic courts' reasoning and in the manner in which the evidence used to convict Mr Mammadov had been admitted, examined and/or assessed. Equally, the manner in which the courts had dealt with the defence's objections concerning that evidence had been inadequate.

The Court examined, in turn, the different categories of evidence, noting first of all that the domestic courts' reliance on the prosecution witness statements to convict Mr Mammadov could only qualify as manifestly unreasonable or arbitrary.

In particular, the courts had never addressed in their judgments the defence's strong and factually substantiated objections calling into question the credibility of **the police officers' witness statements**. The defence had argued that some of the officers had been questioned for the first time as late as five months after the riots, that they had failed to report the events immediately after they had occurred and that there had been no medical evidence of their injuries. Nor did the courts address in an adequate manner the fact that one of the police officers had retracted his pre-trial statement because he had signed it without even reading it, and the implications that that could have had on the credibility of the other police officers' statements. At no point did the courts inquire either whether the officers' statements could have been obtained through undue pressure.

Documents submitted to the Court even suggested that two of the police officers, whose statements had been relied upon to convict Mr Mammadov, could not have actually seen him: one testified that he had been in his office during Mr Mammadov's visit to Ismayilli; and another, injured by a stone, had been in hospital before Mr Mammadov had even arrived in the town.

Furthermore, the courts had accepted certain **witness statements made by civilians** as proof of the accusations against Mr Mammadov, despite the fact that the defence had produced documents showing that one of them had lied. Moreover, another civilian witness, according to the case file, had not mentioned Mr Mammadov at all in her testimony.

In contrast, the courts had refused to give any weight to the **defence witness statements** they had heard. It was not clear why and on what particular basis the domestic courts had found that most of the defence witnesses, who were journalists, had close relations with Mr Mammadov, or why such a finding would lead the courts to assume that they would lie in court and risk committing perjury. The Court therefore considered that the conclusion that all of the witnesses who had testified in Mr Mammadov's favour had been untruthful and biased had been made without sufficient reasons and without due regard to the individual situation of each witness.

**The letters written by the law-enforcement authorities**, also used to convict Mr Mammadov, had given brief and vague factual statements, with no substantiating material (such as investigative documents, videos, reports of search operations). Despite Mr Mammadov's repeated objections to the use of those letters as evidence, he had never been given the opportunity to challenge the authors of those letters during the criminal proceedings.

The Court examined the full content of Mr Mammadov's **blog posts and social media posts** as well as a transcript of his **interview with Azadliq Radio** and, unlike the domestic courts, did not find that they proved that he had planned the mass disorder. On the contrary, the posts had been made and the interview given either in Ismayilli or after leaving it, and, although strongly critical of the authorities, had contained no intention to commit a criminal offence or incitement to violence. Using Mr Mammadov's public statements as evidence to convict him had therefore clearly been arbitrary.

Similarly the courts' assessment of the **news coverage on the riots**, finding that it had supported the prosecution's case, had been arbitrary. Although there had been reports of a general situation of tension, none of the media sources had expressly reported any actual outbreak of violence during the afternoon of 24 January 2013.

Finally, as concerned the **video recordings**, one had shown clashes between protestors and the police whereas another had shown footage of calm streets with very few protestors. The first-instance court had relied on the footage showing clashes, but on appeal the court – apparently recognising that that footage had been of events in the morning and therefore before Mr Mammadov had arrived in town – had agreed to allow the footage taken during the afternoon by a camera installed on a building along the alleged route of the protestors. However, this recording showed that the situation had been calm. The appeal court held that this could have been because the protestors had been going along the street one-by-one or had arrived from other directions. The courts thus created a purely hypothetical version of events which had never even been argued by the prosecution and which had not been supported by any evidence.

Indeed, the higher instances had remained silent about the defence's allegations of the prosecution having tried to pass off one video recording showing clashes as having taken place in the afternoon (when Mammadov had been present), whereas the footage had actually been recorded in the morning. In support of their allegations, they had submitted the full version of the video as well as another video of a similar nature. The courts should have examined such strong evidence, and all the more so in a case where the main point of contention between the parties had been whether any mass disorder had actually taken place while Mr Mammadov had been in Ismayilli.

In conclusion, Mr Mammadov's conviction had been based on flawed or misrepresented evidence and his objections in this respect had been inadequately addressed. The evidence favourable to him had been systematically dismissed in an inadequately reasoned or manifestly unreasonable manner. Even though the case had been remitted once for a new examination by the Supreme Court and an attempt had been made to address some of the defence's requests and objections, none of the above shortcomings had ultimately been remedied. The criminal proceedings against Mr Mammadov, taken as a whole, had not therefore complied with the guarantees of a fair trial. There had accordingly been a violation of Article 6 § 1 of the Convention.

Given that conclusion, the Court considered that it was not necessary to further examine in detail Mr Mammadov's arguments concerning the allegedly inadequate facilities for the preparation of the defence. It was also unnecessary to examine the issue concerning the disbarment of one of his lawyers.

#### [Other articles](#)

The Court further held that it was not necessary to examine separately the complaints under Articles 13 and 14 or to examine the admissibility and merits of the complaint under Article 18 in conjunction with Article 6. Mr Mammadov's complaint under Article 17 was declared inadmissible.

#### [Article 41 \(just satisfaction\)](#)

The Court held that Azerbaijan was to pay Mr Mammadov 10,000 euros (EUR) in respect of non-pecuniary damage.

## Separate opinion

Judges Nussberger, Tsotsoria, O’Leary and Mits expressed a joint concurring opinion which is annexed to the judgment.

*The judgment is available only in English.*

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