



Azerbaijan authorities prosecuted two civil society activists on drugs charges in retaliation for political graffiti on statue

The case of [Ibrahimov and Mammadov v. Azerbaijan](#) (applications nos. 63571/16, 2890/17, 39541/17, 74143/16, 2883/17, 39527/17) concerned two applicants who were arrested and prosecuted on drugs charges, which they alleged were false and that the real reason for the authorities' actions was that they had painted political graffiti on the statue of a former president.

In today's **Chamber judgment**¹ the European Court of Human Rights held, unanimously, that there had been:

violations of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights owing to the applicants' ill-treatment by the police and to the lack of an effective investigation, and,

a violation of Article 5 § 1 (right to liberty and security) for their arrest without a reasonable suspicion of a criminal offence, and,

a violation of Article 5 § 4 (lawfulness of detention) because the domestic courts had failed to protect them against arbitrary arrest and continued pre-trial detention, and,

a violation of Article 18 (improper use of restrictions in the Convention) taken in conjunction with Article 5 because the actual reason for the applicants' arrest and detention had been their painting political graffiti, and,

a violation of Article 10 (freedom of expression).

The Court, relying on evidence which included reports from the Committee for the Prevention of Torture and the United Nations, found in particular that the applicants had made credible allegations of ill-treatment which the Government had not been able to rebut.

The drugs charges had been based on evidence which had not met the minimum standard for material to form a reasonable suspicion against the applicants. The Court also applied earlier findings of a systemic failure by the courts to protect against arbitrary arrest and detention.

It was clear from the contextual factors, the failings of the investigation and the timing of the police's actions that the real purpose for their arrest, detention and prosecution had been their painting the graffiti with political slogans.

The resultant interference with their right to freedom of expression had been "grossly arbitrary and incompatible with the principle of the rule of law" which was inherent in the Convention.

Principal facts

The applicants, Giyas Hasan oglu Ibrahimov and Bayram Farman oglu Mammadov, are two Azerbaijani nationals who were born in 1994 and 1995 respectively and live in Baku.

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.

Both applicants, members of the NIDA, civil society movement, were arrested in May 2016, after they had sprayed graffiti on a statue of Heydar Aliyev, the former president of Azerbaijan, and had posted images of the graffiti on social media. The graffiti included the words “F ... ck the system” and “Happy slave day”, a play on words with the phrase “Happy flower day”, linked to commemorations of the former president’s birthday.

According to the applicants, they were arrested by being seized in the street by men in plain clothes who punched and questioned them about painting graffiti on the statue. They were taken to the Baku Main Police Department, where police officers allegedly planted drugs on them and subjected them to ill-treatment in order to force them to confess to drugs charges. They initially refused to confess but did so after being ill-treated and threatened by the police.

They were subsequently taken to their apartments, where the police found drugs, which the applicants allege were also planted. Both applicants were eventually taken to a temporary detention facility at the Narimanov District Police Office, where they were forced to clean the yard and were further beaten. Their lawyer witnessed the alleged ill-treatment and them sweeping the yard.

Both men were taken to Khatai District Court for a decision on the preventive measure to be applied pending their trial and they complained to the court about suffering ill-treatment and that their confessions had been made under duress. The court ordered the investigating authorities to examine their allegations of ill-treatment. According to the applicants, on their return to the detention centre, they were again subjected to ill-treatment.

In May 2016 the United Nations Working Group on Arbitrary Detention visited Azerbaijan and met the applicants, whom it described as bearing the “physical sequels” of ill-treatment.

The Government stated that both applicants had been arrested after the police had received information of them being involved in drug trafficking. They had had State-funded lawyers and had been charged after evidence had been found. They had also had a medical examination at the detention facility and no injuries had been found on them. The criminal investigation into their complaints of police ill-treatment had concluded that their ill-treatment allegations were unfounded.

The applicants were remanded in custody pending trial, with the courts rejecting their appeals against detention and their requests for release. In 2016 they were convicted of drugs offences and sentenced to 10 years’ imprisonment. They were released by presidential pardon in March 2019.

Complaints, procedure and composition of the Court

The applicants complained under Article 3 (prohibition of torture and of inhuman or degrading treatment) that they had been ill-treated during their arrest and while in police custody and that the authorities had failed to carry out an effective investigation.

Under Article 5 § 1 (right to liberty and security), they submitted that their arrest had not been based on a reasonable suspicion, while under Article 5 and Article 6 (right to a fair trial) they alleged that the courts had failed to provide relevant and sufficient reasons to justify their pre-trial detention and that the review of their detention had been ineffective.

Under Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5, they complained that their right to liberty had been restricted for purposes other than those set down in the Convention, namely in order to punish them for their graffiti with political slogans.

Lastly, they raised complaints under Article 10 (freedom of expression) and Article 8 (right to respect for private and home life), both alone and in conjunction with Article 18.

The application was lodged with the European Court of Human Rights on 25 October 2016.

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

Síofra O’Leary (Ireland), *President*,
Gabriele Kucsko-Stadlmayer (Austria),
André Potocki (France),
Yonko Grozev (Bulgaria),
Mārtiņš Mits (Latvia),
Lətif Hüseynov (Azerbaijan),
Lado Chanturia (Georgia),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 3

Ill-treatment by the police

The Court noted that the parties differed about whether the applicants had suffered ill-treatment, with the Government disputing the applicants’ allegations on all counts. The Government’s submissions were based on the lack of any injuries in medical records and forensic examinations.

However, the Court found that there was prima facie evidence in favour of the applicants’ account: their allegations were in line with findings of the United Nations Working Group on Arbitrary Detention, which had seen marks of ill-treatment on the applicants’ bodies; their lawyer had corroborated their allegations, having witnessed their ill-treatment; and there had been observations by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (the CPT) during visits to Azerbaijan;

The Government had not provided any comments or explanation for the evidence relied on by the applicants, while the medical documents to which it had referred could not serve as grounds to dismiss their allegations. For instance, one medical report had noted “superficial redness” on the first applicant’s neck, but had not explained how it had occurred. Furthermore, there were apparent discrepancies in the records on the timing of the applicants’ admission to the detention centre.

The Court in addition noted remarks by the CPT about systematic delays in allowing detainees to have access to a lawyer of their own choosing until confessions had been obtained in the presence of State-supplied lawyers. It found that the fact that the applicants had made self-incriminating statements while they had only had such legal representation added credibility to their ill-treatment allegations.

The Court found it established beyond a reasonable doubt that the applicants had been subjected to ill-treatment by police officers which had been aimed at forcing them to confess to serious charges which they alleged were fabricated.

Given the evidence at its disposal, the Court held that the applicants had been subjected to inhuman and degrading treatment by the police, in violation of Article 3 under its substantive limb.

Investigation of the applicants’ allegations of ill-treatment

The Court reiterated its case-law on the procedural obligation of Article 3 to carry out an effective investigation into allegations of ill-treatment by the State or its agents. It noted that it had examined other cases against Azerbaijan where investigations had been plagued by similar problems as those experienced by the applicants.

In particular in the applicants' case, it had taken two weeks after their complaints of ill-treatment for forensic examinations to be carried out. The authorities had also failed to secure CCTV recordings of the police station and its detention facility within the seven-day period the recordings were kept, although that deadline could have been met.

Nor had the investigator who had looked into their allegations of ill-treatment taken steps to examine the police station or secure evidence. Rather, he had sent questions and accepted written replies which had been sent by the same police station where the applicants had been ill-treated.

The Court found that the authorities had failed to carry out an effective investigation into credible allegations of ill-treatment. Indeed, it noted that the CPT had described the lack of efficiency of such investigations as rendering "the situation in the country exceptional in the entire Council of Europe". It thus concluded that there had been a violation of Article 3 under its procedural limb.

Article 5 § 1

The applicants argued that their arrest and detention had not been based on a reasonable suspicion of a criminal offence as the drugs found on them and at their apartments had been planted by the police to punish them for their graffiti on the statue. The Government rejected their arguments.

The Court noted that both applicants were members of NIDA, a youth organisation which organised and carried out anti-government protests. It had also previously found in other cases that the authorities targeted NIDA and its members as belonging to "radical destructive forces".

The Government had argued that the applicants' arrest had been based on operational information and other evidence collected by the investigating authorities and so the Court proceeded to examine the criminal case that had been brought against the applicants on drugs charges.

It first noted that although formally speaking their cases were not related, the proceedings against the applicants had essentially followed the same pattern, including an allegation of them obtaining drugs from Iranians under similar circumstances. The authorities had also carried out the same investigative actions, with even the wording of reports within the investigation apparently copied and pasted.

The Court also remarked on the timing: the information about their involvement in drugs trafficking and their arrest had taken place on the same day, while their admission to the detention facility and being brought before a court had taken place at around the same time.

The Court carried out a deeper analysis of the operational information received about the applicants being involved in drug trafficking and of the investigative measures.

In particular on the first point, the operational information had identified the suspected drugs traffickers simply as "Giyas" and "Bayram", without specifically singling out the applicants. The Court found there was an "evidential void" between the receipt of that information and the applicants' arrest. No further material or evidence appeared in the case file to show how the investigators had linked the drugs trafficking information to the applicants.

Investigative measures after their arrest had mainly taken the form of searches of the applicants themselves and their homes. However, the body searches had taken place at the police station in circumstances which were similar to earlier cases where the police's failure to conduct a search immediately following an arrest without good reason had raised legitimate concerns about the possible "planting" of evidence.

The applicants had also been searched under conditions of police ill-treatment. Furthermore, while the reason for arresting the applicants was that they were involved in drugs trafficking, the police had made no effort to find evidence related to such activities, such as cash, information concerning possible suppliers or buyers, or equipment such as scales and packaging material.

Given those and other factors the Court concluded that the material put before it did not meet the minimum standard set by the Convention for the reasonableness of a suspicion required for an individual's arrest. The applicants had therefore been deprived of their liberty in the absence of a "reasonable suspicion" of a criminal offence and there had been a violation of Article 5 § 1.

Article 5 §§ 3 and 4

The applicants raised complaints under Articles 5 and 6 about the domestic courts' decisions. The Court decided to consider those allegations under Article 5 §§ 3 and 4, however, given its findings under 5 § 1 it found that it did not need to consider the complaints under Article 5 § 3.

In *Aliyev v. Azerbaijan* it had found a systemic failure on the part of the domestic courts to protect against arbitrary arrest and continued pre-trial detention. The Government had not put forward any fact or argument capable of persuading it to reach a different conclusion in the applicants' case and the Court found a violation of their rights under Article 5 § 4.

Article 18 in conjunction with Article 5

The applicants argued that the actual purpose of their arrest and detention based on planted evidence had been to punish them for painting graffiti on the statue of the former president. It had also been intended as a warning to others not to do similar things. The Government submitted that their allegations amounted to speculation and that none of the actions against them had been political.

The Court found that the applicants' case was part of a pattern it had found in previous cases of the arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of the criminal law in breach of Article 18.

Firstly, the applicants were members of an opposition-oriented organisation NIDA, who had been arrested and detained shortly after painting graffiti with political slogans on the statue of the former president of Azerbaijan; secondly, they had been charged with serious drug-related offences without a "reasonable suspicion"; thirdly, previous cases had shown that the authorities had targeted NIDA and its members; fourthly, their situation had to be viewed against the backdrop of the arbitrary arrest and detention of government critics and other activists.

The Court found the applicants' liberty had been restricted for purposes other than those set down in Article 5 § 1 (c) of the Convention, with the actual purpose being to punish them for painting graffiti on the statue of the former president and expressing throughout political slogans against the government. There had thus been a violation of Article 18 taken in conjunction with Article 5.

Given that conclusion the Court found that it was not necessary to examine separately the applicants' allegations under Article 8 and Article 18 taken in conjunction with Article 8.

Article 10

The Court found that the applicants' actions had amounted to a form of political expression covered by the Convention. Their arrest and prosecution had constituted an interference with their right to freedom of expression, which could only be justified under certain circumstances.

However, instead of acting within the constraints of the law the authorities had chosen to prosecute the applicants for drug-related crimes in retaliation for their actions. Such an interference with the applicants' freedom of expression had not only been unlawful, but it had also been grossly arbitrary and incompatible with the principle of the rule of law, which was expressly mentioned in the Preamble to the Convention and was inherent in all the Articles of the Convention.

The Court concluded that there had been a violation of Article 10.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay each applicant 30,000 euros (EUR) in respect of non-pecuniary damage and EUR 6,000 each 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.