



Arrest and detention of Azerbaijan journalist was aimed at silencing and punishing her

In today's **Chamber** judgment¹ in the case of [Khadija Ismayilova v. Azerbaijan \(no. 2\)](#) (application no. 30778/15) the European Court of Human Rights held unanimously that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights because the applicant had been arrested and detained without a reasonable suspicion of an offence, and,

a violation of Article 5 § 4 (review of lawfulness of detention) of the European Convention, and,

a violation of Article 6 § 2 (right to presumption of innocence), and,

a violation of Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5.

The case concerned the applicant's complaint that she had been arrested and detained without a reasonable suspicion of an offence and her allegations that those acts were aimed at punishing her for her work as a journalist who was critical of the Government.

The Court found in particular that one of the charges against her – that she had incited a former colleague to commit suicide – was based on a false complaint made under coercion and that other charges related to her work at a radio station were not backed up by facts.

It concluded that the authorities' actions against Ms Ismayilova, a journalist who had published articles critical of members of the Government and their families for alleged corruption and illegal business activities, had been driven by the improper reasons of silencing her and punishing her for her journalistic activity.

Principal facts

The applicant, Khadija Rovshan gizi Ismayilova, is an Azerbaijani national who was born in 1976 and lives in Baku (Azerbaijan).

Ms Ismayilova worked for the Baku bureau of Azadliq Radio, the Azerbaijani service of the US-funded radio station Radio Free Europe/Radio Liberty, as an employee, manager or freelancer.

Notably between 2010 and 2012 she wrote investigative articles which examined the alleged involvement of President Aliyev's family in illegal business activities. Intimate videos of her were unlawfully recorded by a hidden camera and subsequently put on the Internet (events which were the subject of *Khadija Ismayilova v. Azerbaijan*).

In 2013 and 2014 she and other civil society activists were criticised in State media, including an article by the then head of the Presidential Administration in December 2014, which described the applicant as someone who "demonstrates a hostile attitude towards well-known Azerbaijani public figures and spreads insulting lies".

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.

In December 2014 Ms Ismayilova was charged with the criminal offence of incitement to suicide after a former colleague alleged that he had tried to kill himself because she had pressured and humiliated him after he had ended a relationship with her. Sabail District Court remanded the applicant in custody. The same court and the Baku Court of Appeal rejected her requests to be released or for a non-custodial measure. The detention order was extended several times.

The former colleague who had made the original allegation subsequently stated on Facebook that he would withdraw his complaint, adding later that the authorities had coerced him into making it.

In February 2015 the authorities brought further charges against Ms Ismayilova, accusing her of high-level embezzlement, illegal entrepreneurship, large-scale tax evasion and aggravated abuse of power, mainly concerning her activities when she was head of the Baku bureau of Azadliq Radio.

In September 2015 she was found guilty of the financial charges and sentenced to seven and a half years' imprisonment. The charge of incitement to suicide was dropped for lack of evidence. The Supreme Court in May 2016 quashed her conviction for high-level embezzlement and aggravated abuse of power, reducing her sentence to three years' imprisonment suspended on probation and releasing her from detention.

In December 2014, after her arrest, the Prosecutor General's Office released a statement with the title "Illegal acts of Khadija Ismayilova have been unmasked", about her former colleague's allegations.

Complaints, procedure and composition of the Court

Relying on Article 5 §§ 1 (c) and 3 (right to liberty and security / entitlement to trial within a reasonable time or to release pending trial), Ms Ismayilova complained that she had been arrested and detained without there being a reasonable suspicion that she had committed a criminal offence.

Under Article 5 and Article 6 (right to a fair trial), she argued that she had not had enough time or facilities to challenge the lawfulness of her detention; that the courts had not been impartial or independent; and that the authorities had failed to carry out an effective review of her detention and provide reasons for it. She also alleged that the court decisions extending her detention and the statement by the Prosecutor General's Office had breached Article 6 § 2 (presumption of innocence).

She also complained about the authorities' actions under Article 18 (limitation on use of restrictions on rights) taken in conjunction with Article 5, and under Article 10 (freedom of expression).

The application was lodged with the European Court of Human Rights on 8 June 2015.

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

Síofra O'Leary (Ireland), *President*,
Ganna Yudkivska (Ukraine),
Yonko Grozev (Bulgaria),
Mārtiņš Mits (Latvia),
Lətif Hüseynov (Azerbaijan),
Lado Chanturia (Georgia),
Anja Seibert-Fohr (Germany),

and also Claudia Westerdiek, *Section Registrar*.

Decision of the Court

Article 5 §§ 1 (c) and 3

Referring to the general principles set out in similar cases brought against Azerbaijan, the Court held

that it had to examine whether there were sufficient objective elements that could have lead an objective observer to reasonably believe that Ms Ismayilova might have committed the alleged acts.

Charge of incitement to commit suicide

The charge of incitement to suicide had been the reason for the applicant's initial detention and the main question was whether the former colleague's complaint could have formed the basis for a reasonable suspicion, taking account of his later statement that he had been coerced into making it.

The Court noted that it had requested all the documents relating to the criminal proceedings but that it had not received any that would show what investigative measures had been carried out after the institution of criminal proceedings on the attempted suicide incident, in particular in the period between late October and late November 2014.

For instance, it was not clear whether the police had questioned the former colleague about why he had tried to kill himself. Even after his complaint it had not been demonstrated that the authorities had taken any measures to confirm or dispel the suspicion against the applicant. Indeed, no evidence was shown to exist which corroborated the alleged suspicion that the applicant had subjected her former colleague to humiliation which had incited him to attempt to commit suicide.

Nor had there been any official inquiry or explanation by the prosecuting authorities after the complainant had publicly stated that he had been subjected to pressure because of his intention to withdraw his complaint. The Government had made no comment on that subject either.

Given the former colleague's public statements and the Government's silence in the face of such serious allegations, the Court had to accept that he had been coerced into making a false claim which had led to Ms Ismayilova being charged with the crime in question.

The Court thus concluded that this evidence could not have justified the "reasonableness" of the suspicion. Furthermore, the domestic courts had completely ignored her arguments of a lack of objective evidence.

Overall the Court found that there was nothing in the case file to satisfy an objective observer that the applicant might have committed the offence of incitement to suicide and so her arrest and pre-trial detention had not been based on a reasonable suspicion of her committing that crime.

Charges related to her work at the radio station

The charges related to her work at the radio station had striking similarities to those in [Rasul Jafarov v. Azerbaijan](#) and [Mammadli v. Azerbaijan](#), which had concerned non-governmental organisation activists charged with exactly the same offences as the applicant, albeit linked to NGO work.

The charges were that she had continued the radio station's broadcasting activities without the required licence and had carried out journalistic activities without accreditation. According to prosecutors that had amounted to commercial activities for which she had failed to pay profit tax.

However, the Court found that the prosecutors' conclusions were not sustainable.

Firstly, it was not clear why the applicant, as an employee or a manager, should have been criminally responsible for the radio station's alleged failure to obtain a licence. Secondly, the authorities had not referred to any provision which criminalised the acts she had been accused of. Indeed, a breach of licensing rules in such circumstances was punishable by an administrative fine.

Furthermore, domestic law provided clear definitions of commercial and non-commercial activities and it was difficult to see how the lack of a licence or accreditation could automatically make a non-commercial organisation into a commercial one. Ms Ismayilova could not therefore have been reasonably suspected of illegal entrepreneurship. The Court also found no evidence to back up the suspicion of embezzlement and abuse of power.

Conclusion

The material in the case file did not meet the minimum standard for the reasonableness of a suspicion required for arrest and continued detention. The applicant had therefore been deprived of her liberty in violation of the Convention.

Article 5 § 4

The Court examined the applicant's complaints under Article 5 and Article 6 under Article 5 § 4.

Similarly to the cases of *Ilqar Mammadov v. Azerbaijan* and *Rasul Jafarov v. Azerbaijan*, the Court found that the domestic courts had failed to verify the existence of a reasonable suspicion underpinning Ms Ismayilova's arrest and detention, despite her repeated complaints on that issue. The Court thus found a violation of this provision of the Convention.

Article 6 § 2

The Court found that the title of the statement by the Prosecutor General's Office that "illegal acts have been unmasked" and the remark therein had amounted to a clear declaration of Ms Ismayilova's guilt, whereas a careful distinction had to be drawn between saying someone was suspected of a crime and stating, in the absence of a final conviction, that he or she was guilty.

While the word "suspicion" had been used by the Prosecutor General's Office, it had not come until the end of the statement, when readers would already have formed the view that the applicant was guilty. There had thus been a violation of the applicant's right to be presumed innocent.

Article 18 in conjunction with Article 5

Ms Ismayilova argued that her arrest and pre-trial detention had been intended to punish and silence her as an investigative journalist and outspoken critic of the Government. She had published several well-researched articles revealing Government involvement in corruption which had been widely read and when she had refused to stop working despite threats she had been arrested.

The Government submitted that the restrictions had not been for any other purpose than those allowed by Article 5.

The Court noted its finding that there had been no reasonable suspicion against the applicant. It had then to examine whether there had been an ulterior purpose for the authorities' actions.

It held that Ms Ismayilova's case was part of a previously identified pattern of the arbitrary arrest and detention of government critics, civil society activists and human rights defenders through retaliatory prosecution and misuse of the criminal law, in breach of Article 18.

The Court found that Ms Ismayilova, a well-known journalist, had initially been arrested on the basis of a false claim made under coercion. When it had become clear that that the authorities' actions were about to be exposed, they had charged her with other crimes. The arrest had been accompanied by stigmatising official statements in a situation where other rights activists had been charged with similar offences.

The totality of the circumstances indicated that the authorities' actions had been driven by improper reasons and showed that the actual goal had been to silence and punish her for her work as a journalist.

The restrictions had been imposed for a purpose other than that set down by Article 5 § 1 (c) and there had been a violation of Article 18.

While reiterating its findings in *Khadija Ismayilova v. Azerbaijan* where it had found a violation of Article 10, the Court saw no need to carry out a separate examination of her complaint under that provision in this case.

Just satisfaction (Article 41)

The Court held that Azerbaijan was to pay the applicant 20,000 euros (EUR) in respect of pecuniary damage and non-pecuniary damage and EUR 5,000 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.