



Azerbaijan failed to comply with the European Court's 2014 judgment in the case of political activist Ilgar Mammadov

The **Grand Chamber** of the European Court of Human Rights, delivering its first [judgment](#) in infringement proceedings under Article 46 § 4 of the European Convention, today found that Azerbaijan had failed to fulfil its obligation to comply with the Court's 2014 ruling in the case of political activist Ilgar Mammadov (application no. 15172/13).

The Grand Chamber found, unanimously, that there had been:

a violation of Article 46 § 1 (binding force and execution of judgments) of the European Convention on Human Rights by Azerbaijan.

The case concerned the referral of a question to the Court on 5 December 2017 by the Committee of Ministers of the Council of Europe, which is responsible for supervising the enforcement of the Court's judgments, as to whether Azerbaijan had failed to abide by the 2014 judgment by not releasing Mr Mammadov unconditionally. The Committee was using powers set out in Article 46 § 4 of the European Convention.

The Court found in particular that the Government had taken only limited steps to implement the judgment, which had not amounted to Azerbaijan acting in "good faith" or in a manner which was in accordance with the "conclusions and spirit" of its ruling in Mr Mammadov's case.

It concluded that Azerbaijan had failed to fulfil its obligation under Article 46 § 1 of the Convention to abide by the judgment.

In accordance with Article 46 § 5 of the Convention, cases in which the Court finds a violation of Article 46 § 1 are to be referred back to the Committee of Ministers for consideration of the measures to be taken.

The Court's 2014 judgment found that Azerbaijan had violated Mr Mammadov's rights by charging him with criminal offences and placing him in pre-trial detention in 2013 without there being any reasonable suspicion that he had committed an offence. It considered the circumstances indicated the actual purpose of those measures was to silence or punish Mr Mammadov for criticising the Government.

In the enforcement proceedings the Committee of Ministers stressed the fundamental flaws in the criminal proceedings and called many times for Azerbaijan to release Mr Mammadov as an essential step towards redressing the violations the Court had found.

However, he remained in detention for almost four years after the Court's judgment had become final on 13 October 2014, until his conditional release on 13 August 2018, following the initiation of the infringement proceedings. In March 2019 the Supreme Court, after reducing his sentence, found he had served his time in full and set aside the probation order and other conditions on his release.

Principal facts

The applicant, Ilgar Eldar oglu Mammadov, is an Azerbaijani national who was born in 1970 and lives in Baku. He is a political blogger and activist who had also announced his intention to run as president in 2013.

He was placed in pre-trial detention in February 2013 after writing on his blog about disturbances in a town called Ismayilli. He said, among other things, that people there had been reacting to the

“corruption and insolence” of public officials. He was subsequently charged with organising or actively participating in actions causing a breach of public order, and then later charged with mass disorder and resistance to or violence against public officials, posing a threat to their life or health.

Mr Mammadov lodged an application with the Court on 25 February 2013, alleging in particular that he had been arrested and detained without a “reasonable suspicion” of a criminal offence; that his right to be presumed innocent had been breached; and that he had been prosecuted for his political views and the threat he had presented as a potential presidential candidate.

In March 2014 he was convicted and sentenced to seven years in prison.

In a Chamber judgment of 22 May 2014 (the [first Mammadov judgment](#)) the Court found violations of Article 5 § 1 (right to liberty and security), Article 5 § 4 (right to judicial review of detention); Article 6 § 2 (presumption of innocence), and of Article 18 (limitation on use of restrictions on rights) in conjunction with Article 5. It also awarded him 20,000 euros in just satisfaction in respect of non-pecuniary damage.

The Committee of Ministers first examined the case in December 2014. It took numerous decisions and adopted interim resolutions, highlighting the State’s obligation under Article 46 § 1 of the Convention to adopt individual measures to put an end to any violations that had been established and to erase their consequences, so as to put Mr Mammadov in the position he would have been in if his rights had not been violated (*restitutio in integrum*).

It stressed the fundamental flaws in the criminal proceedings revealed by the Court’s conclusions under Article 18 combined with Article 5 of the Convention, and called for Mr Mammadov’s release without delay and subsequently for his immediate and unconditional release. However, he remained detained on the basis of the criminal charges at issue.

In October 2017 the Committee put Azerbaijan on formal notice that, in its view, it had failed to fulfil its obligation under the Convention, the first step in an infringement procedure which was introduced in 2010 under Article 46 § 4 of the Convention.

Further to that procedure, the Committee of Ministers in December 2017 referred a question to the Court on Azerbaijan’s fulfilment of its obligation under Article 46 § 1.

Mr Mammadov was freed on probation in August 2018. In March 2019 the Supreme Court reduced his sentence, found he had served his time in full and set aside the conditions on his release.

In November 2017 the Court found that Mr Mammadov’s trial on the same criminal charges as those criticised in its 2014 judgment had also violated his rights (the [second Mammadov judgment](#)).

Procedure and composition of the Court

The question referred to the Court by the Committee of Ministers was whether the Republic of Azerbaijan had failed to fulfil its obligation under Article 46 § 1 to abide by the Court’s May 2014 judgment in the case of Mr Mammadov.

The referral was filed with the Registrar of the Court on 11 December 2017 and was allocated to the Grand Chamber. The Committee of Ministers, the Government of Azerbaijan and Mr Mammadov made written submissions.

Today’s judgment was given by the Grand Chamber of 17 judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Robert **Spano** (Iceland),
Ganna **Yudkivska** (Ukraine),
Helena **Jäderblom** (Sweden),

Nebojša **Vučinić** (Montenegro),
Paulo **Pinto de Albuquerque** (Portugal),
Erik **Møse** (Norway),
Krzysztof **Wojtyczek** (Poland),
Valeriu **Grițco** (the Republic of Moldova),
Dmitry **Dedov** (Russia),
Iulia Antoanella **Motoc** (Romania),
Síofra **O’Leary** (Ireland),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
Alena **Poláčková** (Slovakia),
Lətif **Hüseynov** (Azerbaijan),

and also Roderick **Liddell**, *Registrar*.

Decision of the Court

Proceedings under Article 46 § 4

As this was the first time the Court was dealing with infringement proceedings, it first determined its approach. It noted in particular that the drafting history of Protocol No. 14, which had introduced this measure, showed that proceedings under Article 46 § 4 were aimed at improving and accelerating the execution of its judgments.

It found that the requirements of Article 46 reflected principles of international law, including the obligation on respondent States to achieve *restitutio in integrum* as far as possible, and to prevent similar violations. Those principles were contained in the Committee of Ministers’ Rules, and the supervision mechanism now established under Article 46 provided a comprehensive framework for the execution of the Court’s judgments, reinforced by the Committee of Ministers’ practice.

The Court’s role was not to displace the Committee of Ministers in its supervisory task. However, under Article 46 § 4 it had to make a final determination on an issue of compliance with a judgment. In doing so it had to take account of all the relevant factors, including the Committee’s conclusions, the Government’s position and the victim’s submissions, and to identify the legal obligations flowing from the final judgment. Such a judgment also had to refer to the situation of compliance at the time a question was referred to the Court.

The scope of the case

The wording of the Committee of Ministers’ question was wide, but the Court found that in essence it focussed on Azerbaijan’s alleged failure to take individual measures to abide by the Court’s finding of violations of Mr Mammadov’s rights under Article 18 in conjunction with Article 5. It thus did not need to examine in detail the other elements of the judgment, such as that of just satisfaction, which Azerbaijan had paid in December 2014, or general measures.

Examination of individual measures

The Court noted that its judgment had not explicitly stated what individual measures Azerbaijan had to take, but that was not decisive. The question was whether the measures taken by the Government were compatible with the conclusions and spirit of the first Mammadov judgment, in which it had found that the authorities’ actions in pursuing the impugned criminal charges against Mr Mammadov had intended to silence or punish him for criticising the Government.

The Court observed that its finding of a violation of Article 18 in conjunction with Article 5 of the Convention vitiated any action resulting from the imposition of the charges.

The obligation on the State authorities had been to achieve, as far as possible, *restitutio in integrum*. In the light of the conclusions and the spirit of the judgment, that had meant eliminating the negative consequences of imposing the abusive criminal charges, including by releasing Mr Mammadov from detention. The Court noted that in the Government's view the various court proceedings in which Mr Mammadov had appealed against his conviction, had addressed the issues raised by the first *Mammadov* judgment. The Government had also observed that Mr Mammadov had eventually been released in August 2018.

However, the Court found that by the time the Committee of Ministers had begun the infringement process in December 2017 it was clear that the domestic proceedings had not provided the redress required. Indeed, a court of appeal had in 2016 rejected the Strasbourg findings under Article 5 § 1 (c) and had made no mention of the finding of a violation of Article 18 in conjunction with Article 5.

Nor had his release in March 2018 or the Supreme Court judgment of March 2019 provided redress as, like the other domestic decisions, they had upheld the conviction based on the abusive charges. In any case, both of those decisions had been given after the Committee of Ministers' referral.

Conclusion

The Court observed that the whole structure of the Convention rested on the assumption that the authorities in the Member States acted in good faith. The rights guaranteed by the Convention were meant to be practical and effective rather than illusory and theoretical.

The limited steps taken to enforce the Court's first judgment in Mr Mammadov's case did not permit the Court to conclude that Azerbaijan had acted in "good faith" in a manner compatible with the "conclusions and spirit" of the judgment, or in a way which had provided practical and effective protection for the Convention rights found to have been violated in that case.

It therefore found that Azerbaijan had failed to fulfil the obligation under Article 46 § 1 to abide by the judgment in Mr Mammadov's case.

Separate opinions

Judges Yudkivska, Pinto de Albuquerque, Wojtyczek, Dedov, Motoc, Poláčeková and Hüseyinov expressed a joint concurring opinion, and Judge Wojtyczek and Judge Motoc each expressed further concurring opinions.

The judgment is available in English and French.

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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.