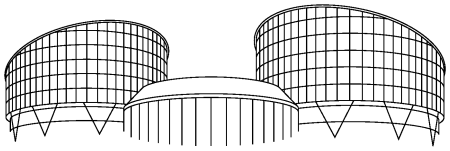

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ILGAR MAMMADOV v. AZERBAIJAN

(Application no. 15172/13)

JUDGMENT

STRASBOURG

22 May 2014

FINAL

13/10/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ilgar Mammadov v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 15 April 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 15172/13) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Ilgar Eldar oglu Mammadov (*İlqar Eldar oğlu Məmmədov* – "the applicant"), on 25 February 2013.

2. The applicant was represented by Mr F. Agayev, a lawyer practising in Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged, in particular, that his arrest and pre-trial detention had not been justified and had been carried out in bad faith, that his right to presumption of innocence had been breached, and that his rights were restricted for purposes other than those prescribed in the Convention.

4. On 8 April 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1970 and lives in Baku.

A. Background

6. The applicant has been involved in various political organisations and local and international non-governmental organisations for a number of years. In 2008 he co-founded the Republican Alternative Civic Movement ("REAL") and in 2012 was elected its chairman. He is also Director of the Baku School of Political Studies, which is part of a network of schools of political studies affiliated with the Council of Europe. He has held that position for several years.

7. The applicant maintained a personal internet blog on which he commented on various political issues. In particular, in November 2012, after the enactment of a new law by the National Assembly introducing heavy sanctions for unauthorised public gatherings, the applicant posted a comment on his blog which he claimed was meant to insult members of the National Assembly. Without naming any names, he went on to state, *inter alia*, that the National Assembly was composed of "fraudulent people" and compared the entire legislative body to a zoo. Those statements were quoted in the media and elicited a number of seemingly irate responses from various National Assembly members. The responses, also published in the media, ranged in content from retaliatory *ad hominem* insults to calls for punishment and threats of suing him in court. According to the applicant, the parliamentarians' "lawsuit plans were ... temporarily dropped" after the calls for reprisals against the applicant were condemned by one of the Vice-Presidents of the European Commission, who was visiting the country at the time.

8. At the beginning of January 2013 REAL announced that it would consider nominating its own candidate for the upcoming presidential election of November 2013. The applicant himself announced that he was considering standing as a candidate in the election. According to the applicant, his prospective presidential candidacy was widely discussed in Azerbaijan at that time.

B. The Ismayilli events of January 2013

9. On 23 January 2013 rioting broke out in the town of Ismayilli, located to the northwest of Baku. According to media reports quoting local residents, the rioting was sparked by an incident involving V.A., the son of the Minister of Labour and Social Protection and nephew of the Head of the Ismayilli District Executive Authority ("IDEA"). It was claimed that after being involved in a car accident, V.A. had insulted and physically assaulted passengers of the other car, who were local residents. On hearing of the incident, hundreds (perhaps thousands) of local residents took to the streets and destroyed a number of commercial establishments (including the Chirag

Hotel) and other property in Ismayilli thought to be owned by V.A.'s family.

10. On 24 January 2013 the Ministry of Internal Affairs and the Prosecutor General's Office issued a joint press statement, placing the blame for the rioting on E.S., a hotel manager, and his relative E.M., who had allegedly been drunk and who, it was claimed, had committed acts of hooliganism by damaging local residents' property and inciting people to riot.

11. Meanwhile, the Head of IDEA, V.A.'s uncle, publicly denied that the Chirag Hotel belonged to his family.

C. The applicant's role in the Ismayilli events

12. On 24 January 2013 the applicant travelled to Ismayilli to get a first-hand account of the events. On 25 January 2013 he described his impressions from the trip on his blog. The entire post read as follows:

> "Yesterday afternoon I spent a little longer than two hours in Ismayilli, together with [another member] of our Movement [REAL] and our media coordinator... First, here is [the summary of] what I wrote on Facebook during those hours using my phone:
>
> - We have entered the town.
>
> - There is a lot of police and their number is growing. The protesters gather each hour or two and make speeches. We are in front of the building of the [Ismayilli District] Executive Authority. There are around 500 police officers in this area.
>
> - The cause of the events is the general tension arising from corruption and insolence [of public officials]. In short, people have had enough. We are having conversations with local residents.
>
> - The [ethnic] Russians of the village of Ivanovka are also fed up; they tried to come to [Ismayilli] to support the protest, but the road was blocked and they were sent back.
>
> - Everybody is preparing for the night.
>
> - We are leaving Ismayilli, returning to Baku. The matter is clear to us. Quba was the first call. Ismayilli is the second. After the third call, the show will begin.
>
> We came back after having fully investigated the situation in Ismayilli. I wrote that clashes would again take place in the evening, by posting 'everybody is preparing for the night' [on Facebook]. People there had been saying 'We'll give them hell in the evening; we have procured supplies' (meaning the fuel for Molotov cocktails had been bought). People are angry. There are also those who do not care and who are afraid, but those who are not afraid are very exasperated and will continue the protest at night. This is no longer a political situation where we could stay there and try to change something; this is already a situation of disorderly crisis which requires conciliatory steps by the State to be resolved.
>
> No one should fool oneself or others. The events in Ismayilli were not and are not a calm peaceful protest, it is an extremely violent but just protest and the responsibility for it lies with Ilham Aliyev.

> As it is with all revolutionary processes, in the beginning the political initiative is still in the hands of the President, but by not taking action he is gradually losing this initiative. When [such leaders] begin to react to the situation, it is usually too late and their actions have no effect. Mubarak, the Shah of Iran, and all others have gone this way."

13. On 28 January 2013 the applicant posted more information on his blog concerning the events, citing the official websites of the Ministry of Culture and Tourism and the Ministry of Taxes and publishing screenshots of those sites. In particular, he noted that, according to those sources and to information posted on V.A.'s Facebook account, the Chirag Hotel was actually owned by V.A. This directly contradicted the earlier denial by the Head of IDEA. The information cited by the applicant was removed from the aforementioned Government websites and V.A.'s Facebook page within one hour of the applicant publishing his blog entry. However, the blog entry itself was extensively quoted in the media.

14. On 29 January 2013 the Prosecutor General's Office and the Ministry of Internal Affairs issued a new joint press statement concerning the events in Ismayilli. It noted that ten people had been charged with criminal offences in connection with the events of 23 January 2013, and had been detained pending trial. In addition, fifty-two people had been arrested in connection with their participation in "actions causing a serious breach of public order"; some of them had been convicted of "administrative offences" and sentenced to a few days' "administrative detention" or a fine, while others had been released. The statement further noted that "lately, biased and partial information has been deliberately disseminated, distorting the true nature of the mentioned events resulting from hooliganism", including information about large numbers of injured people and the disappearance of one individual. The statement refuted that information, noting that only four people had been admitted to the regional hospital with injuries and that no one had disappeared. It further stated, *inter alia*, the following:

> "Following the carrying out of inquiries, it has been established that on 24 January 2013 the Deputy Chairman of the Musavat Party, Tofiq Yaqublu, and the Co-chairman of the REAL Movement, Ilgar Mammadov, went to Ismayilli and made appeals to local residents aimed at social and political destabilisation, such as calls to resist the police, not to obey officials and to block roads. Their illegal actions, which were calculated to inflame the situation in the country, will be fully and thoroughly investigated and receive legal assessment."

15. On 30 January 2013 the applicant commented on that statement on his blog. He noted that the Government had taken a decision to "punish and frighten" him, and that there were several reasons for that: firstly, the applicant's blog posting of 28 January 2013, which had revealed facts embarrassing the Government; secondly, the fact that REAL had raised a public debate on the June 2012 legislative amendments aimed at keeping secret information concerning shareholders in companies, creating "a more

clandestine environment for stealing the oil money"; thirdly, the applicant's earlier criticism of the National Assembly, in which he compared it to "a zoo", following enactment of the legislation placing "severe limitations on the freedom of assembly" by "introducing unjustifiably high monetary penalties for attending unauthorised demonstrations"; and lastly, the REAL Movement's "quickly accumulating strength" prior to the presidential election, becoming a "serious barrier in the eyes of the traditional [political] players" and threatening "to spoil the repeat of the election farce performed year after year".

D. Institution of criminal proceedings against the applicant

16. On 29 January 2013 the applicant received a phone call from the Serious Crimes Department of the Prosecutor General's Office and was orally invited to the department for questioning as a witness. Although that did not constitute a formal summons, the applicant went to the Prosecutor General's Office and was questioned.

17. According to the record of the questioning, the applicant stated that he had arrived in Ismayilli in a car driven by another member of REAL at around 3.30 p.m. on 24 January 2013. After entering the town, they stopped from time to time and spoke to local residents without getting out of the car, in order to receive first-hand information about the events that had taken place up to that time. When they arrived at the central square where the IDEA building was located, they met a number of journalists and saw a large number of police and law-enforcement officers. At the square, the applicant spoke only to the journalists; he did not speak to any local residents. No violent clashes were happening at the square at that time. While at the square, the applicant saw Tofiq Yaqublu, who was also visiting the town, but separately from the applicant. They stopped to greet each other and immediately went their separate ways. The applicant and his colleague from REAL spent about thirty to forty minutes at the square. The applicant, his colleague from REAL, and one of the journalists then spent some time in a nearby teahouse. After a while, the three of them returned to Baku. On their way out of Ismayilli, they again stopped a few times and, from inside the car, spoke to passers-by about the situation in the town.

18. During the questioning, the investigator informed the applicant that it had been established from "the material in the criminal case file" that at around 5 p.m. of that day, while standing near the building of the Ismayilli Region Education Department, the applicant and Mr Tofiq Yaqublu had been inciting local residents to cause disorder, disobey the police, block roads and throw stones at the police. The applicant was asked to comment on that. He replied that that information was false and a calumny against him.

19. After the questioning had ended, the applicant went home.

20. In the evening of 3 February 2013 the applicant received another telephone call asking him to come in for further questioning.

21. In the morning of 4 February 2013 the applicant voluntarily appeared at the Prosecutor General's Office. First, from 10.50 to 11.10 a.m. a face-to-face confrontation was held between the applicant and R.N., described in the record of the confrontation as a resident of the Ashagi Julyan village of the Ismayilli Region. According to a copy of that record (submitted by the Government to the Court as a separate document enclosed with their observations), R.N. stated that on 24 January 2013 he had been in Ismayilli where he had seen many police officers, as well as a number of young people slowly gathering in groups of five to seven. He heard people discussing the events of the day before. Among them, he saw Tofiq Yaqublu and the applicant. He did not know the applicant's identity until he inquired about it and someone told him. He heard the applicant and Tofiq Yaqublu telling people to throw stones at the police and to capture the IDEA building. Following this, people started throwing stones at the police.

22. According to the record, in reply, the applicant stated that everything that R.N. had said was false and a laughable fabrication, and that it was an attempt to frame him and pressure him for political reasons.

23. After the questioning ended at 11.10 a.m., the applicant was not allowed to leave the building.

24. From 12.50 to 1.05 p.m. another face-to-face confrontation was held, this time with another Ismayilli Region resident, I.M. According to the record of the questioning (also submitted by the Government to the Court as a separate document enclosed with their observations), I.M. stated that on 24 January 2013 he had been in Ismayilli and had seen lots of young people gathering. There were also many police officers. Protesters were throwing stones at the police. Then he saw two persons standing near the Education Department building and telling protesters to throw stones, not to be afraid, and to capture the IDEA building. Having inquired from the bystanders who those two persons were, he was told that they were Tofiq Yaqublu and the applicant. Then he saw and heard two police officers named Namiq and Vahid tell the applicant and Tofiq Yaqublu to calm down, but to no avail.

25. According to the record, in reply, the applicant stated that I.M.'s statement was a fabrication and that "everything happening in this room" amounted to political sabotage against him and the Azerbaijani people. The applicant also noted in the record, in handwriting, that he had not been allowed to leave the building during the period of more than one hour between the two face-to-face confrontations, despite his wish to the contrary.

26. The above face-to-face confrontations were not specifically mentioned in the official charges against the applicant (see paragraph 27 below) or the prosecution's subsequent requests for a judicial order on the applicant's remand in custody or an extension of the detention period, and

the names of R.N. and I.M. were not otherwise mentioned in either of the above or in any other official document made available to the Court by the parties and relating to the applicant's pre-trial detention and the criminal proceedings against him.

27. After the second confrontation, the applicant was again denied permission to leave. At 3.24 p.m., following the arrival of his defence lawyer, the applicant was charged with criminal offences under Articles 233 (organising or actively participating in actions causing a breach of public order) and 315.2 (resistance to or violence against public officials, posing a threat to their life or health) of the Criminal Code. The specific acts attributed to the applicant were described as follows:

"Beginning at around 3 p.m. on 24 January 2013, Ilgar Eldar oglu Mammadov,

having taken advantage of the fact that from around 9.30 p.m. on 23 January 2013 a group of persons in the town of Ismayilli had engaged in acts of malicious hooliganism causing a serious breach of public order, had deliberately burned, in a publicly dangerous manner, property belonging to various persons [including] the Chirag Hotel, four cars, five mopeds and scooters, and an auxiliary building located in the yard of a private residential house, and had committed acts of violence against Government officials,

having, in his false way of thinking, considered [the above events] as a 'rebellion',

aiming to make the above acts develop and acquire a continuous character in order to create artificial tension and to violate the social and political stability in the country,

being a resident of Baku, arrived in Ismayilli and, together with Tofiq Rashid oglu Yaqublu and with the active participation of others, [committed the following:]

organised, as an active participant, acts causing a serious breach of public order, by means of openly and repeatedly inciting town residents [E.I.], [M.A.] and others, who had gathered at the square near the administrative building of the Regional Education Department located on the Nariman Narimanov Street opposite to the administrative building of [the IDEA], [to do the following:]

> [i] to enter in masses into the area in front of the building of [the IDEA], which is the competent body of the executive power of the Republic of Azerbaijan, and by doing so to create difficulties for the movement of traffic and pedestrians, [ii] to disobey the lawful demands to disperse, made by Government officials wanting to stop their illegal behaviour, [iii] to resist uniformed police officers protecting the public order, by way of committing violent acts posing danger to [police officers'] life and health, using various objects, [iv] to disrupt the normal functioning of [the IDEA], State enterprises, bodies and organisations, as well as public-catering, commercial and public-service facilities, by way of refusing to leave, for a long period of time, the areas where the acts seriously breaching the public order were being committed, and [v] to stop the movement of traffic, by way of blocking the central avenue and the Nariman Narimanov Street, and

was finally able to achieve that, at around 5 p.m. of the same day in the town of Ismayilli, a group of persons consisting of [E.I.], [M.A.] and others had marched in masses from the mentioned square in the direction of the administrative building of [the IDEA] and had thrown stones at officers of the relevant bodies of the Ministry of

> Internal Affairs who were preventing [this march] in accordance with the requirements of the law.
>
> By these actions, Ilgar Eldar oglu Mammadov committed the criminal offences under Articles 233 and 315.2 of the Criminal Code of the Republic of Azerbaijan."[1]

28. From 4.30 to 5.10 p.m., the applicant was questioned again, this time as an accused. During the interview he gave essentially the same statement as during the interview of 29 January 2013 (see paragraph 17 above).

E. The applicant's remand in custody

29. At around 6 p.m. the applicant was taken to the Nasimi District Court. The Deputy Prosecutor General lodged an application with the Nasimi District Court asking it to order the applicant's remand in custody. The application was essentially a copy of the text of the decision to charge the applicant with the criminal offences (see paragraph 27 above). It was followed by a note stating that it was necessary to remand the applicant in custody because of the gravity and publicly dangerous character of the offences committed, because they carried a sanction of over two years' imprisonment, and because there were "sufficient reasons" to believe that, if released, the applicant would abscond or obstruct the investigation by unlawfully influencing persons participating in the criminal proceedings.

30. The court hearing commenced at around 7 p.m. in the presence of the applicant, his lawyers, a member of the investigation team, and one of the prosecutors working in the Serious Crimes Department of the Prosecutor General's Office. According to the applicant, and not disputed by the Government, the prosecution did not submit the case file or the records of the applicant's questioning to the court.

31. At the hearing, the applicant and his lawyers submitted that the accusation against the applicant was groundless and was not supported by any evidence. As for the applicant's conduct, they pointed out that he had voluntarily appeared before the prosecution as soon as requested to do so and that, therefore, there were no reasons to believe that he would abscond or interfere with the investigation. They argued that, for those reasons, his detention was not justified.

32. By a decision of 4 February 2013, the Nasimi District Court ordered the applicant's remand in custody for a period of two months (until 4 April 2013). The part of the decision containing the court's reasoning read as follows:

> "Having examined the [prosecution's] application and enclosed documents and having heard the oral submissions of the parties, and taking into account the existence of sufficient grounds to believe that, if released, the accused Ilgar Eldar oglu

[1] Unlike the original text, the translation is broken down into paragraphs for easier comprehension.

> Mammadov would abscond from the investigation or disrupt the normal course of the investigation by unlawfully influencing persons involved in the proceedings, the publicly dangerous character and gravity of the criminal offence committed, and the fact that he is charged with a criminal offence carrying a sanction of over two years' imprisonment, the court considers that the preventive measure of remanding him in custody must be applied in his respect."

33. On 5 February 2013 the applicant lodged a complaint with the Nasimi District Court, claiming that he had been unlawfully deprived of his liberty during the period from 11.10 a.m. to 7 p.m. on 4 February 2013. His complaint was rejected on 22 February 2013.

34. On 6 February 2013 the applicant lodged an appeal against the detention order of 4 February 2013. He argued that he had been detained in breach of the domestic law and Article 5 of the Convention. He complained that, although the introductory part of the detention order stated that the court had reviewed preliminary evidence collected by the prosecution, no evidence or any other information giving rise to a reasonable suspicion that he had committed a criminal offence had been presented by the prosecution to the first-instance court. The court had issued the order solely on the basis of the decision to charge the applicant with the criminal offences and the prosecution's request to order his remand in custody, without independently verifying whether there was a reasonable suspicion against him. He further complained that the court had not provided relevant and sufficient reasons to justify his detention by finding that he might abscond from the investigation or attempt to obstruct the proceedings. As for his conduct prior to arrest, he had been cooperative with the authorities and, on more than one occasion, had appeared for questioning after a simple phone call, even without having been formally summoned. Other factors, such as the fact that he had a wife and a small child, a permanent residence and a job in Baku, his personality, social status and professional occupation, his affiliation with the Council of Europe's programmes, no prior criminal record, and so on, also showed that he was very unlikely to abscond and should have been taken into account by the court. In his appeal, as well as relying on the relevant domestic law, the applicant also relied extensively on the European Court's case-law and cited a number of its judgments concerning Article 5 of the Convention.

35. On the same date the applicant submitted to the Nasimi District Court observations on the transcript of that court's hearing of 4 February 2013, to be included in the case file. The observations mainly concerned the prosecutor's inability and refusal to answer questions posed by the defence during the oral hearing. Those questions concerned the prosecution's failure to produce any evidence on which its suspicions against the applicant were based or to identify the specific circumstances which had led it to believe that the applicant, if released, would abscond or obstruct the proceedings.

36. The Baku Court of Appeal's hearing was scheduled to be held on 8 February 2013. The hearing was delayed for some hours, awaiting the

Nasimi District Court's examination of the applicant's observations on the transcript of the hearing and the request to include them in the documents related to his pre-trial detention, which had been forwarded to the Baku Court of Appeal. During the delay, the Nasimi District Court took a decision refusing to incorporate the applicant's observations into the transcript of the hearing.

37. According to the applicant, and not disputed by the Government, as at the first-instance hearing, the prosecution's case materials were not made available to the court at the appellate hearing.

38. By a decision of 8 February 2013 the Baku Court of Appeal rejected the applicant's appeal and upheld the Nasimi District Court's detention order of 4 February 2013, finding as follows:

> "Taking into account the personality of Ilgar Eldar oglu Mammadov, the publicly dangerous character and gravity of the criminal offences in question, the fact that [those offences] belong to the category of less serious crimes, that [the applicant], if released, could abscond and would disrupt the objectivity of the investigation by unlawfully influencing persons involved in the criminal proceedings, the court considers that the Nasimi District Court's decision of 4 February 2013 ordering the applicant's remand in custody is lawful and justified and must be upheld. ...
>
> In *Van de Hurk v. the Netherlands* [(19 April 1994, § 61, Series A no. 288], the European Court of Human Rights noted that the right to a fair trial required that a court should give reasons for its decisions. This does not mean, however, that a detailed answer should be given to every argument raised by the parties."

39. Having provided the above reasoning, the Baku Court of Appeal did not address any of the specific arguments raised by the applicant against the necessity of detention (see paragraph 34 above).

F. Extensions of pre-trial detention and new charges

40. On 11 March 2013 the applicant lodged a request with the Nasimi District Court to change the preventive measure of remand in custody to house arrest. He argued that his previous conduct had showed that he did not intend to avoid the investigation. Furthermore, his personal circumstances (his family situation, the fact that he had a permanent job and a permanent place of residence, his active political career in Baku, and so on) made it very unlikely that he would abscond. Lastly, in his case, "persons involved in the criminal proceedings" lived in Ismayilli, and not in Baku where he resided. Therefore, it was unlikely that he would unlawfully influence them.

41. At the hearing on 12 March 2013 the prosecution submitted that the request was "groundless" and reiterated that there was a risk that if the applicant were not detained, he would abscond or disrupt the investigation. On the same day the Nasimi District Court rejected the applicant's request. The reasoning provided by the court was as follows:

> "Having examined the counsel's request, having heard the persons participating in the hearing, and having examined the case material, the court considers that the request cannot be granted because the grounds for detaining the accused person have not ceased to exist."

42. The applicant lodged an appeal against that decision. On 27 March 2013 his appeal was dismissed by the Baku Court of Appeal.

43. In the meantime, on 13 March 2013 the prosecution requested an extension of the applicant's detention (originally authorised until 4 April 2013), noting that, despite the fact that a number of investigative measures had been taken, the case was complex and more time was needed to complete the investigation. According to the applicant, and undisputed by the Government, apart from that request, the prosecution did not submit to the court any other material relating to the criminal case. At the hearing of 14 March 2013 concerning the extension request, the prosecution gave no answer to the defence's questions as to what specific evidence served as grounds for suspecting the applicant of having committed a criminal offence, what specific investigative measures had been taken so far and what further measures needed to be taken. Following the hearing, the applicant's lawyer formally requested that the judge include the above questions and the (lack of) answers in the transcript of the hearing, but to no avail.

44. On 14 March 2013 the Nasimi District Court extended the applicant's pre-trial detention by two more months (until 4 June 2013), providing the following reasoning:

> "Taking into account the fact that the accused is charged with offences belonging to the category of less serious crimes, the complexity of the criminal proceedings, the need for more time to complete the investigation, and the necessity to carry out a number of investigative measures, the court considers that [the prosecution's] request must be granted and the period of the accused's detention extended ... to 4 June 2013."

45. The applicant appealed, reiterating in detail all the arguments against his detention that he had previously raised before the courts. He also argued that it was not permissible, under the domestic law and the Convention, to justify prolonging his pre-trial detention on the ground that the prosecution needed more time to do its job. Again, he cited a number of relevant judgments of the European Court concerning various issues relating to pre-trial detention.

46. On 19 March 2013 the Baku Court of Appeal dismissed the applicant's appeal, upholding the extension decision of 14 March 2013 and providing the same reasoning as the first-instance court.

47. On 5 April 2013 the applicant applied to the Nasimi District Court for bail, reiterating his previous arguments against his detention. On 8 April 2013 the Nasimi District Court rejected his request, finding that the grounds

justifying his detention, as specified in its decision of 14 March 2013, "had not ceased to exist".

48. The applicant appealed, reiterating in detail his arguments for release. On 15 April 2013 the Baku Court of Appeal upheld the Nasimi District Court's decision of 5 April 2013.

49. On 30 April 2013 the head of the investigation team decided to charge the applicant with new offences, this time under Articles 220.1 (mass disorder) and 315.2 (resistance to or violence against public officials, posing a threat to their life or health) of the Criminal Code. In essence, the charge under Article 220.1, which carried a much heavier sentence (four to twelve years' imprisonment), replaced the previous charge under Article 233. No changes were made in the original description of the accusations against the applicant (see paragraph 27 above).

50. One of the effects of the new charge under Article 220.1 of the Criminal Code was that the applicant could no longer apply for bail, because the law did not permit individuals accused of deliberately committing "serious criminal offences" to be released on bail (see paragraphs 71 and 74 below). Moreover, as a person charged with a "serious criminal offence", the applicant's pre-trial detention could now be extended for a longer overall period (see paragraphs 71 and 73 below).

51. On 15 May 2013 the Nasimi District Court extended the applicant's detention (which had been authorised until 4 June 2013) by another three months (until 4 September 2013). At the hearing, the applicant's lawyer reiterated his specific arguments for release and further argued that there were no relevant factors justifying the applicant's detention. In its decision, the District Court justified the applicant's continued detention as follows:

> "Having heard the parties, having examined the [prosecution's] request on the basis of the case material, and taking into account the scope of the investigative measures to be taken and the fact that the grounds for [the applicant's] detention have not ceased to exist, the court considers that [the prosecution's extension] request must be granted and the period of [the applicant's] detention extended ..."

52. The applicant appealed, reiterating his previous arguments. On 27 May 2013 the Baku Court of Appeal upheld the extension order, providing reasoning similar to that given by the courts previously.

53. On 14 August 2013 the Nasimi District Court extended the applicant's detention (previously authorised until 4 September 2013) by another two months (until 4 November 2013). On 20 August 2013 the Baku Court of Appeal upheld the detention order on appeal. The arguments made before the courts and the courts' reasoning were essentially the same as in the previous extension hearings and decisions.

54. No further extension decisions are available in the case file.

55. The applicant's criminal trial began in November 2013. On 17 March 2014 the Sheki Court of Serious Crimes convicted the applicant

and sentenced him to seven years' imprisonment. The conviction is not yet final and the appeal is pending.

G. Public reaction to the applicant's arrest and criminal proceedings against him

56. The applicant's case generated wide publicity. Some of the select reactions to the case are summarised below.

57. Immediately after the applicant's arrest, a number of domestic NGOs, as well as international NGOs such as Amnesty International, Human Rights Watch and Article 19, condemned the authorities' actions, assessing them as a "politically motivated persecution" on "trumped up" charges.

58. On 6 February 2013, Pedro Agramunt and Joseph Debono Grech, PACE Monitoring Committee co-rapporteurs on Azerbaijan, expressed their concern at the arrest of the applicant, noting that it "gave rise to justified doubts and legitimate concerns" and urging the authorities to release the applicant and Tofiq Yagublu.

59. On 8 February 2013, Thorbjørn Jagland, the Secretary General of the Council of Europe, made the following official statement: "I am concerned by ... the heavy-handed response of the police to the protests. I am particularly disturbed by the arrest on 4 February of Tofig Yagublu and Ilgar Mammadov, in relation to recent events in Ismayilli. Mr Mammadov is the Director of the Baku School of Political Studies, a close co-operation partner of the Council of Europe. Today's decision of the Baku Court of Appeal not to release these two men and its refusal to allow the Council of Europe's representative to be present during the court proceedings is of particular gravity". In his further statement of 3 May 2013, Thorbjørn Jagland "expressed his concern and disappointment" at the new charges against the applicant.

60. On 9 February 2013, the spokespersons of EU High Representative Catherine Ashton, and the European Commissioner for Enlargement and Neighbourhood Policy, Štefan Füle, issued a statement expressing concern over the applicant's arrest and urged the authorities to ensure a fair, transparent and independent investigation of the charges against him.

61. On 13 June 2013, the European Parliament adopted a resolution entitled "Azerbaijan: Case of Ilgar Mammadov" (2013/2668(RSP)). *Inter alia*, the resolution assesses the applicant's detention as "unlawful" and "an apparent attempt to keep him behind bars pending the forthcoming elections", "strongly condemns the detention of Mr Mammadov, calls for his immediate and unconditional release and an end to his prosecution", and "expresses serious concern over reports by human rights defenders and domestic and international NGOs about the alleged use of fabricated charges against politicians, activists and journalists".

H. The applicant's nomination for the presidential elections

62. The process of registration of candidates for the presidential elections started on 4 August 2013. The Electoral Code required candidates to submit their initial eligibility documents to the Central Electoral Commission ("the CEC"), which would then issue them with official signature sheets in order to collect a minimum of 40,000 voter signatures in support of the nomination. The deadline for submission of the signatures and all other documents was 9 September 2013.

63. Since the applicant needed an authorised representative to deal with various matters concerning his nomination, on 1 August 2013 the applicant's lawyer requested the Serious Crimes Department of the Prosecutor General's Office to set up a meeting between the applicant and a notary public in the Baku Detention Facility, in order to prepare a power of attorney for his representative in electoral matters. The permission for a notary public's visit was given on 21 August 2013. The notary public visited the detention facility and certified the power of attorney on 23 August 2013.

64. Pending a response to the above request, on 10 August 2013 the applicant sent his initial eligibility documents to the CEC from the detention facility's post office. According to the applicant, the documents were not delivered to the CEC until 22 August 2013.

65. On 23 August 2013 the CEC returned the applicant's initial eligibility documents, having found that they had shortcomings. After rectification of the shortcomings, the applicant's representative resubmitted the documents on the same day.

66. On 27 August 2013 the CEC preliminarily accepted the applicant's nomination as a candidate in the elections, pending the verification of the required voter signatures (see paragraph 62 above) due by 9 September 2013. The applicant's representatives submitted the required signature sheets.

67. On 13 September 2013 the CEC refused to register the applicant as a candidate, finding that his signature sheets contained a number of invalid signatures and that the number of valid signatures in support of the applicant was below the minimum (40,000) required by law.

II. RELEVANT DOMESTIC LAW

A. Criminal Code

68. Article 220.1 of the Criminal Code provides as follows:

Article 220. Mass disorder

"220.1. Organisation of or participation in mass disorder accompanied by violence, plunder, arson, destruction of property, use of firearms or explosive substances or devices, or by armed resistance to public officers –

is punishable by deprivation of liberty for a period from four to twelve years.

..."

69. Article 223 of the Criminal Code provides as follows:

Article 233. Organisation or active participation in actions causing a breach of public order

"Organisation by a group of persons of actions which grossly breach public order, or are associated with insubordination to lawful demands of a public officer, or cause disruption of the normal functioning of transport, enterprises, bodies and organisations, as well as active participation in such actions –

is punishable by a fine in the amount of five thousand manats to eight thousand manats, or correctional labour for a period of up to two years, or deprivation of liberty for a period of up to three years."

70. Article 315 of the Criminal Code provides as follows:

Article 315. Resistance to or violence against a public officer

"315.1. Use of violence against, or violent resistance to, a public officer in connection with the exercise of the latter's official duties, or use against the close relatives of such a public officer of violence which does not pose a danger to their life or health, or the threat of use of such violence –

is punishable by deprivation of liberty for a period of up to three years.

315.2. Use against persons mentioned in Article 315.1 of this Code of violence which poses a danger to their life and health –

is punishable by deprivation of liberty for a period from three to seven years."

71. Article 15 of the Criminal Code classifies criminal offences by degree of gravity into (i) offences which do not pose a major public threat, (ii) "less serious" criminal offences, (iii) serious criminal offences, and (iv) especially serious criminal offences. According to Article 15.3, a "less serious criminal offence" is an offence committed deliberately or negligently for which the maximum punishment does not exceed seven years' imprisonment. Under Article 15.4, a "serious criminal offence" is an offence committed deliberately or negligently, for which the maximum punishment does not exceed twelve years' imprisonment. Under those criteria, the offences under Articles 233 and 315.2 of the Criminal Code fall into the category of "less serious criminal offences", while the offence under Article 220.1 of the Criminal Code falls into the category of "serious criminal offences".

B. Code of Criminal Procedure ("the CCrP")

72. A detailed description of the relevant provisions of the CCrP concerning pre-trial detention and the proceedings concerning the application and review of the preventive measure of remand in custody can be found in the Court's judgments in *Farhad Aliyev v. Azerbaijan* (no. 37138/06, §§ 83-102, 9 November 2010), and *Muradverdiyev v. Azerbaijan* (no. 16966/06, §§ 35-49, 9 December 2010).

73. In respect of persons accused of "less serious criminal offences", the maximum length of remand in custody during the pre-trial period cannot exceed nine months from the time of the arrest, including all possible extensions of the initial two-month period. In respect of persons accused of "serious criminal offences", the maximum length is twelve months, including all possible extensions of the initial three-month period (Articles 158.1, 159.1, 159.2, 159.7 and 159.8 of the CCrP).

74. Under Articles 164.1 and 164.2 of the CCrP, release on bail can be ordered only as a substitute measure replacing a previously ordered remand in custody and on the basis of the detainee's request. Bail can be granted only in respect of persons accused of offences which do not pose a major public threat, less serious criminal offences, or serious offences committed negligently.

C. Decisions of the Plenum of the Supreme Court

1. *Decision "on the application of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights in the administration of justice" of 30 March 2006*

75. The relevant part of this decision reads as follows:

> "13. ... the preventive measure of remand in custody must be considered an exceptional measure to be applied in absolutely necessary cases, where the application of another preventive measure is not possible.
>
> 14. The courts should take into account that persons whose right to liberty has been restricted are entitled, in accordance with Article 5 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to trial within a reasonable time, as well as to release pending trial if it is not necessary to apply the preventive measure of remand in custody in respect of them."

2. *Decision "on the application of the legislation by the courts during the examination of requests for the application of the preventive measure of remand in custody in respect of an accused" of 3 November 2009*

76. The relevant part of this decision reads as follows:

"3. Under the legislation, there must be substantive and procedural grounds justifying the application of the preventive measure of remand in custody. The substantive grounds are to be understood as the evidence establishing a connection between the accused and the commission of the criminal offence imputed to him. The procedural grounds consist of the grounds justifying the lawfulness and necessity of the application of the preventive measure of remand in custody, as determined by the court from the aggregate of the circumstances provided by Article 155 of the Code of Criminal Procedure ["the CCrP"].

When deciding to apply the preventive measure of remand in custody, the courts must not be content with only listing the procedural grounds provided for by Article 155 of [the CCrP], but must verify whether each ground is relevant in respect of the accused and whether it is supported by the materials in the case file. In so doing, the nature and gravity of the offence committed by the accused, information about his personality, age, family situation, occupation, health and other circumstances of that kind must be taken into consideration. ...

6. Requests for application of the preventive measure of remand in custody, extension of the detention period and replacement of detention by house arrest or release on bail must be examined in camera by a single judge in the court building within twenty-four hours of their receipt (regardless of whether it is a public holiday or after the end of working hours). The presence at the hearing of the person whose rights may be restricted by the request is compulsory.

The courts must take into account that the examination of requests for application of the preventive measure of remand in custody or for extension of the detention period in the absence of the accused is allowed only in exceptional circumstances where it is not possible to ensure his presence at the hearing. These circumstances may be where the accused has absconded from the investigation, is being treated in a psychiatric hospital or for a serious illness, emergency circumstances, a declaration of quarantine, or other similar circumstances. ...

8. Under Article 447.5 of [the CCrP], when examining a request on application of the preventive measure of remand in custody, a judge has a right to review documents and material evidence serving as a basis for the request.

It must be explained to the courts that this provision of the criminal procedural legislation does not provide for examination and assessment of evidence by the courts. The judicial review under this provision should only consist of reviewing the initial evidence giving rise to a suspicion that the accused has committed a criminal offence and verifying the existence of the procedural grounds required for application of the preventive measure of remand in custody.

9. The courts should apply more scrutiny to ensuring that the material submitted by the preliminary investigation authority in connection with this issue is complete and of sound quality. ... The request [for the preventive measure of remand in custody] must be accompanied by material necessary for its examination, for example, copies of records and decisions on institution of the criminal proceedings, on the accused person's arrest, on charging him as an accused, on his questioning, and identity documents. Under Article 447.5 of [the CCrP], the judge has a right to request and review other documents (for example, statements given in connection with the charges or records of face-to-face confrontations) as well as the material evidence, in order to determine whether the request [for the preventive measure of remand in custody] is substantiated. ...

> 13. ... the courts are reminded that although the legislator determined the same material and procedural grounds and rules for the examination of requests for application of the preventive measure of remand in custody and extension of a detention period, since the extension of the detention period restricts for a long period a person's right to liberty as well as his right to the presumption of innocence, the courts when examining requests of this kind must be careful, verify the grounds and reasons for the extension of the detention, and justify in their decisions the necessity to extend the detention period in a different manner from the necessity for the [initial] application of the preventive measure of remand in custody.
>
> During the examination of requests for extension of the accused's detention period, the courts must verify in detail the arguments in the request concerning why it is not possible to terminate the preliminary investigation within the period previously established. In so doing, it must take into account that, in accordance with the case-law of the European Court of Human Rights, relying on the same grounds which were the basis for the [initial] application of the preventive measure of remand in custody in respect of the accused when ordering the extension of his detention period is considered as a violation of the right to liberty and security from the point of view of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms".

THE LAW

I. SCOPE OF THE APPLICATION

77. The application was communicated to the respondent Government on 8 April 2013 under Article 5 §§ 1, 2, 3 and 4 and Articles 6 § 2, 13, 14 and 18 of the Convention. Following submissions of observations by both parties, on 18 September 2013 the applicant made new submissions concerning the factual developments in the case (summarised in paragraphs 40-55 and 62-67 above) and elaborating on his original complaints, taking into account those factual developments. The new submissions were forwarded to the respondent Government, who submitted their comments on them.

78. As a general rule, the Court does not examine any new matters raised after the communication of the application to the Government, unless the new matters are an elaboration on the applicant's original complaints to the Court (see *Farhad Aliyev*, cited above, § 104, with further references). The Court notes that the applicant's original application included a number of complaints related to his arrest and continuing detention, under the above-mentioned Convention provisions. His subsequent submissions did not constitute a new matter which had not been covered in the original application communicated to the Government. The submissions concerned the factual developments in the proceedings concerning the applicant's continued detention in the framework of the same proceedings, as well as the developments in other circumstances allegedly related to the continued

detention (such as his intention to run in the presidential election), of which he had already complained in his original application. No new complaints were raised. In so far as the applicant further elaborated on his original complaints in the context of the new factual developments, the respondent Government were given an opportunity to submit further observations in this regard, of which they made use.

79. Accordingly, the events described in the applicant's subsequent submissions fall within the scope of the present case. The Court will therefore proceed with the examination of the applicant's complaints related to his pre-trial detention, taking into account all the relevant factual information made available to it, covering the events up to the latest extension of the applicant's detention by the Nasimi District Court's order of 14 August 2013, as upheld on 20 August 2013.

II. ALLEGED VIOLATION OF ARTICLE 5 §§ 1 (c) AND 3 OF THE CONVENTION

80. Relying on Article 5 §§ 1 (c) and 3 of the Convention, the applicant complained that he had been arrested and detained in the absence of a "reasonable suspicion" that he had committed a criminal offence. He further complained that the domestic courts had failed to provide relevant and sufficient reasons justifying the necessity for his continued detention. He also complained that he had been unlawfully and arbitrarily deprived of his liberty during the period from 11.10 a.m. to 7 p.m. on 4 February 2013.

Article 5 §§ 1 (c) and 3 of the Convention reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

81. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground

for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The Government

82. The Government submitted that none of the requirements of Article 5 of the Convention had been breached, as alleged by the applicant, and that nothing in the case material proved the opposite. The courts had duly examined the material submitted by the prosecution.

(b) The applicant

83. The applicant submitted that on 4 February 2013, during breaks between various police interviews that had taken place on that day, he had not been allowed to leave the offices of the Serious Crimes Department of the Prosecutor General's Office. He argued that, as from his arrival at the Department's offices at 11.10 a.m., he had *de facto* been deprived of his liberty without a formal record of arrest. Therefore, his detention from 11.10 a.m. to 7 p.m. (the time when the court order to remand him in custody was issued) on 4 February 2013 had not been "lawful".

84. The applicant maintained that the accusations against him had been without grounds and that all the steps taken by the authorities to prosecute and detain him had been arbitrary and politically motivated. The prosecution authorities were not in possession of any objective evidence or information that could have given rise to a "reasonable suspicion" that he had committed a criminal offence.

85. He noted that the only relevant documents actually seen by each first-instance and appellate court deciding on his pre-trial detention were the prosecution's brief written statements requesting the application of pre-trial detention or its extension. The prosecution case file had never been submitted to the courts ordering or extending his pre-trial detention and had never been requested by the courts themselves. Consequently, the courts had never actually verified whether there existed any evidence giving rise to a reasonable suspicion against him, required to justify his detention under Article 5 § 1 (c) of the Convention. Although the applicant repeatedly complained about that to the prosecution officials and the judges, his complaints were either not addressed or the defence was told that there was no need to show the case file to a judge deciding on the applicant's detention. Moreover, the questions and arguments raised by the defence at the oral hearings concerning this matter, as well as the prosecution's answers or failure to answer, were never included in the minutes of the court

hearings, even when the defence made specific formal requests to that effect.

86. Furthermore, the applicant argued that the domestic courts had failed to provide relevant and sufficient reasons justifying his detention. The courts noted in their decisions that there was a danger of the applicant absconding, relying solely on the gravity of the charge and the severity of the possible sentence, and without considering any relevant factors such as his character, occupation, family ties, place of residence, clean criminal record, his earlier conduct in connection with the prosecution's requests, and so on. Similarly, the finding that he was likely to obstruct the investigation was not based on a review of any relevant facts.

2. The Court's assessment

87. The Court reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c), it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody (see *Brogan and Others v. the United Kingdom*, 29 November 1988, § 53, Series A no. 145-B). Nor is it necessary that the person detained should ultimately have been charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or discontinuing suspicions which provide the grounds for detention. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Murray v. the United Kingdom*, 28 October 1994, § 55, Series A no. 300-A).

88. However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. The fact that a suspicion is held in good faith is insufficient. The words "reasonable suspicion" mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will depend upon all the circumstances (see *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182). The length of the deprivation of liberty may also be material to the level of suspicion required (see *Murray*, cited above, § 56).

89. When assessing the "reasonableness" of the suspicion, the Court must be enabled to ascertain whether the essence of the safeguard afforded by Article 5 § 1 (c) has been secured. Consequently, the respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offence (see *Fox, Campbell and Hartley*, cited above, § 34 *in fine*).

90. The Court notes that the applicant in the present case complained of the lack of "reasonable" suspicion against him throughout the entire period of his detention, including both the initial period following his arrest and the subsequent periods when his remand in custody had been authorised and extended by court orders. In this connection, the Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a prerequisite for the lawfulness of the continued detention (see, among many other authorities, *Stögmüller v. Austria*, 10 November 1969, p. 40, § 4, Series A no. 9, and *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-X). Accordingly, while reasonable suspicion must exist at the time of the arrest and initial detention, it must also be shown, in cases of prolonged detention, that the suspicion persisted and remained "reasonable" throughout the detention.

91. In the present case, according to the joint statement of the Prosecutor General's Office and the Ministry of Internal Affairs, and the formal charges against the applicant, the applicant was suspected of organising acts breaching public order in Ismayilli, by verbally inciting Ismayilli town residents to block the central streets and disrupt traffic, disobey lawful demands of the police, commit violence against the police, and disrupt the normal functioning of State authorities and private businesses. The applicant was initially charged with "organising public disorder" and "violent resistance to the police" under Articles 233 and 315.2 of the Criminal Code, respectively. Subsequently, leaving the description of the facts unchanged, the charge under Article 233 was replaced by a more serious charge under Article 220.1 ("mass disorder") of the Criminal Code.

92. The Court has to have regard to all the relevant circumstances in order to be satisfied that there existed any objective information showing that the suspicion against the applicant was "reasonable". In this connection, the Court finds it material that the applicant was an opposition politician who had a history of criticizing the current Government in the wake of the upcoming presidential elections, that some members of parliament had threatened to sue him, and that before his arrest the applicant had posted on his blog sourced information showing that at least part of the official Government version of what had happened in Ismayilli might have been untrue or misrepresented and openly suggesting that the official version was a cover-up attempt. What also needs to be considered is that the applicant was charged with "organising" a riot that had already started in Ismayilli one day before his visit to the town and that had initially been sparked, in a spontaneous manner, by an incident of local significance. By all accounts, the applicant had nothing to do with the original incident of 23 January 2013 that had caused the riot or with what was going on in Ismayilli prior to his visit, and the prosecuting authorities' own account of the events, both in their press statement of 29 January 2013 and in the description of the charges against the applicant (see paragraphs 14 and 27 above), shows that

most, if not all, of the damage caused by the rioting (such as burning of buildings and cars) had taken place on 23 January 2013, before the applicant's arrival.

93. Against this background, the prosecution accused the applicant of essentially the following: that he had arrived in Ismayilli one day after the spontaneous and disorganised "acts of hooliganism" had already taken place and that, within a period of about two hours (the overall length of his stay in the town), he had managed to seize a significant degree of control over the situation, turn the ongoing disorganised rioting into "organised acts" of disorder, establish himself as a leader of the protestors whom he had not known before and who had already gathered without his involvement, and directly cause all of their subsequent disorderly actions.

94. The Court notes that, as a general rule, problems concerning the existence of a "reasonable suspicion" arise at the level of the facts. The question then is whether the arrest and detention were based on sufficient objective elements to justify a "reasonable suspicion" that the facts at issue had actually occurred (see *Włoch v. Poland*, no. 27785/95, § 108, ECHR 2000-XI). The very specific context of the present case calls for a high level of scrutiny of the facts. The Court's task is to verify whether there existed sufficient objective elements that could lead an objective observer to reasonably believe that the applicant might have committed the acts alleged by the prosecuting authorities.

95. In this connection, the applicant submitted that there existed no information or evidence giving rise to a "reasonable" suspicion that he had committed any of the criminal offences with which he was charged. He consistently claimed, both at the domestic level and before the Court, that the prosecution had failed to produce any such evidence, either before the domestic courts or otherwise. The Court reiterates that the Government were silent on this point and have not submitted any specific arguments to rebut the applicant's assertion on this issue. The examination of the material made available to the Court also confirms the applicant's claim.

96. In particular, the Court notes that the prosecution's official documents mentioned no witness statements and no other specific information that had given them reason to suspect the applicant of having committed any of the actions described in those documents and to charge him with the above-mentioned criminal offences. No such statements or other information was presented to the courts deciding on the applicant's remand in custody. Thus, the Court finds it established that the prosecution's case file was neither presented to nor reviewed by the domestic courts for the purpose of verifying the existence of a "reasonable suspicion".

97. The Court also takes note of the decision of the Plenum of the Supreme Court of 3 November 2009, requiring the lower courts to subject the prosecuting authorities' applications for remand in custody to careful

scrutiny and to verify the existence of a suspicion against the accused by making use of their power under Article 447.5 of the CCrP to request and review the "initial evidence" in the prosecution's possession (see paragraph 76 above). However, in the present case, the above directives were not taken into account. The vague and general references by both the prosecution and the courts, in their respective documents and decisions, to unspecified "case material", in the absence of any specific statement, information or concrete complaint cannot be regarded as sufficient to justify the "reasonableness" of the suspicion on which the applicant's arrest and detention were based (compare *Lazoroski v. "the former Yugoslav Republic of Macedonia"*, no. 4922/04, § 48, 8 October 2009).

98. The Court further notes that, enclosed with their observations, the Government submitted copies of the records of the applicant's face-to-face confrontations with R.N. and I.M. However, the Government submitted those records without any comment or explanation as to their pertinence to the present complaint. As mentioned above, those records were not presented before the domestic courts, nor were the witnesses' names and statements otherwise mentioned in the prosecution's procedural decisions (such as the decision to charge the applicant with criminal offences), the prosecution's submissions to the domestic courts, the domestic courts' decisions, or the available transcripts of the court hearings. That fact, in itself, renders the evidence inapplicable in the context of evaluating the reasonableness of the suspicions against the applicant, having regard also to the Government's failure to provide any factual comment on the role of those statements in the present case.

99. For the above reasons, the Court considers that no specific facts or information giving rise to a suspicion justifying the applicant's arrest were mentioned or produced during the pre-trial proceedings, and that R.N.'s and I.M.'s statements, which were only subsequently produced before the Court, have not been shown to constitute such facts or information. Furthermore, it has not been shown that, following the applicant's arrest and throughout the entire period of his continued detention falling within the scope of this case, the authorities obtained any new information or evidence of such nature.

100. The Court is mindful of the fact that the applicant's case has been taken to trial (the applicant's continued detention during the trial proceedings and the trial hearings themselves have not yet been the subject of a complaint before the Court). That, however, does not affect the Court's findings in connection with the present complaint, in which it is called upon to examine whether the deprivation of the applicant's liberty during the pre-trial period was justified on the basis of information or facts available at the relevant time. In this respect, having regard to the above analysis, the Court finds that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention.

Accordingly, it has not been demonstrated in a satisfactory manner that, during the period under the Court's consideration in the present case, the applicant was deprived of his liberty on a "reasonable suspicion" of having committed a criminal offence.

101. There has accordingly been a violation of Article 5 § 1 (c) of the Convention.

102. Having regard to the above finding, the Court considers it unnecessary to examine separately whether the alleged deprivation of the applicant's liberty between 11 a.m. and 7 p.m. on 4 February 2013 was "lawful" under Article 5 § 1. The above finding also makes it redundant to assess whether the reasons given by the domestic courts for the applicant's continued detention were based on "relevant and sufficient" grounds, as required by Article 5 § 3 of the Convention. Therefore, the Court does not consider it necessary to examine separately any issues under Article 5 § 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 2 OF THE CONVENTION

103. Relying on Article 5 § 2 of the Convention, the applicant complained that he had not been informed of the reasons for his arrest during the period from 11.10 a.m. to 7 p.m. on 4 February 2013. Article 5 § 2 provides as follows:

> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him."

104. The Government submitted that the applicant had been informed promptly of the charges against him at 1.05 p.m. on 4 February 2013.

105. The applicant reiterated his complaint.

106. Article 5 § 2 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. Any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest. Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features. When a person is arrested on suspicion of having committed a crime, Article 5 § 2 neither requires that the necessary information be given in a particular form, nor that it consists of a complete list of the charges held against the arrested person (see *Saadi v. the United Kingdom*, no. 13229/03, § 51, 11 July 2006, with further references).

107. In the present case, it is clear from the circumstances of the case and the documents available that the applicant was aware of the essential

reasons for his arrest from the content of the police interviews held on 29 January 2013, prior to his arrest, and on 4 February 2013, on the day of his arrest. Moreover, the decision to charge him with criminal offences, including a list and a brief description of the charges, were given to the applicant at 3.24 p.m. on 4 February 2013. At that time, both he and his lawyer acknowledged receipt of a copy of the decision by their signatures. In such circumstances, the Court considers that the applicant was informed, in a prompt manner, of the reasons for his arrest and the charges against him.

108. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

109. Relying on Article 5 § 4 of the Convention, the applicant complained that the domestic courts had not properly assessed the defence's arguments in favour of his release. Article 5 § 4 provides as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

110. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

111. The Government submitted that the procedure by which the applicant sought to challenge the lawfulness of his pre-trial detention was in conformity with Article 5 § 4 of the Convention and that "nothing in the case-file proved the opposite".

112. The applicant reiterated his complaint and maintained that the courts had failed to respond to any of the relevant arguments against detention that he had repeatedly raised before them.

113. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review of the procedural and substantive conditions which are essential for the "lawfulness", in Convention terms, of the deprivation of their liberty. This means that the competent court has to examine not only compliance with the procedural requirements of domestic law, but also the reasonableness of the suspicion underpinning the arrest and

the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Brogan and Others*, cited above, § 65, and *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II (extracts)).

114. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question. Thus, the proceedings must be adversarial and must always ensure "equality of arms" between the parties (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, §§ 203 - 204, ECHR 2009, with further references). Furthermore, while Article 5 § 4 of the Convention does not impose an obligation to address every argument contained in the detainee's submissions, the judge examining submissions against pre-trial detention must take into account concrete facts which are referred to by the detainee and are capable of casting doubt on the existence of those conditions essential for the "lawfulness", for Convention purposes, of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

115. Article 5 § 4 guarantees no right, as such, to an appeal against court decisions ordering or extending detention and does not compel the States to set up a second level of jurisdiction for examination of applications for release, but the intervention of a judicial body at least at one level of jurisdiction must comply with the guarantees of Article 5 § 4. Where domestic law provides for a system of appeal, the appellate body must also comply with Article 5 § 4 (see *Farhad Aliyev*, cited above, § 204, with further references). In the present case, the matter of ordering and extending the applicant's detention, as well as his requests for release from detention, were decided on each occasion by courts at two levels of jurisdiction, namely the Nasimi District Court as the first instance and the Baku Court of Appeal as the appellate instance.

116. As the Court has repeatedly observed, the domestic courts in the present case consistently failed to verify the reasonableness of the suspicion underpinning the applicant's arrest and repeatedly ignored the applicant's submissions in this regard. The courts did not address any of the specific arguments advanced by the applicant in his written submissions, whereby he challenged the grounds for his arrest by relying on a number of case-specific factual circumstances (see paragraphs 31, 34, 40, 45, 47-48 and 51-53 above).

117. The Court finds it regrettable that, on one occasion, in its decision of 8 February 2013, the Baku Court of Appeal attempted to validate its decision to ignore all of the applicant's arguments by citing a sentence from one of this Court's judgments in what was clearly the wrong context (see

paragraphs 38-39 above). In particular, it referred to the *Van de Hurk* judgment (cited above) concerning a complaint under Article 6 of the Convention, which does not deal with any Article 5 issues or any proceedings concerning pre-trial detention, as in the present case. The Court reiterates that, on the contrary, all of the relevant principles established in its case-law and summarised in the present judgment required the domestic courts to address the applicant's arguments.

118. In all their decisions in the present case, the domestic courts limited themselves to copying the prosecution's written submissions and using short, vague and stereotyped formulae for rejecting the applicant's complaints as unsubstantiated. In essence, the domestic courts limited their role to one of mere automatic endorsement of the prosecution's requests and they cannot be considered to have conducted a genuine review of the "lawfulness" of the applicant's detention. That is contrary not only to the requirements of Article 5 § 4, but also to those of the domestic law as interpreted and clarified by the Plenum of the Supreme Court (see paragraphs 75-76 above).

119. The foregoing considerations are sufficient to enable the Court to conclude that the applicant was not afforded proper judicial review of the lawfulness of his detention. There has accordingly been a violation of Article 5 § 4 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

120. The applicant complained, under Article 6 § 2 of the Convention, that the joint press statement of the Prosecutor General's Office and the Ministry of Internal Affairs of 29 January 2013 (see paragraph 14 above) had infringed his right to the presumption of innocence. Article 6 § 2 of the Convention provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

121. The Court notes that the impugned statement was published on 29 January 2013, before the applicant was arrested and formally charged with criminal offences on 4 February 2013. However, it is clear that the remarks made in the statement had a direct link with the criminal investigation instituted against the applicant and other persons in connection with the Ismayilli events (compare *Allenet de Ribemont v. France*, 10 February 1995, § 37, Series A no. 308). Therefore, the Court finds – and the Government have not disputed – that Article 6 § 2 of the Convention applies in this case.

122. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

123. The Government submitted that the joint press statement of the Prosecutor General's Office and the Ministry of Internal Affairs had the aim of providing information to the public about the status of the investigation and countering the dissemination of inaccurate and distorted information about it. They argued that the statement did not depict the applicant as a criminal.

124. The applicant submitted that the impugned statement amounted to a declaration of the applicant's guilt and prejudged the assessment of the facts by the courts.

2. The Court's assessment

125. The Court reiterates that Article 6 § 2, in its relevant aspect, is aimed at preventing the undermining of a fair criminal trial by prejudicial statements made in close connection with those proceedings. The presumption of innocence enshrined in paragraph 2 of Article 6 is one of the elements of a fair criminal trial that is required by paragraph 1 (see *Allenet de Ribemont*, cited above, § 35). It not only prohibits the premature expression by the tribunal itself of the opinion that the person charged with a criminal offence is guilty before he has been so proved according to the law (see *Minelli v. Switzerland*, 25 March 1983, § 38, Series A no. 62), but also covers statements made by other public officials about pending criminal investigations, which encourage the public to believe the suspect guilty and prejudge the assessment of the facts by the competent judicial authority (see *Allenet de Ribemont*, cited above, § 41, and *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X). The Court stresses that Article 6 § 2 cannot prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected (see *Allenet de Ribemont*, cited above, § 38).

126. It has been the Court's consistent approach that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as

guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Khuzhin and Others v. Russia*, no. 13470/02, § 94, 23 October 2008, with further references) . Whether a statement of a public official is in breach of the principle of the presumption of innocence must be determined in the context of the particular circumstances in which the impugned statement was made (see *Butkevičius*, cited above, § 49).

127. In the present case, the impugned remarks were not made in the framework of the criminal proceedings themselves but as part of a joint press statement by the Prosecutor General's Office and the Ministry of Internal Affairs intended for the public. The Court takes note of the Government's submission that the purpose of the impugned statement was to inform the public about the steps taken by the authorities in connection with the Ismayilli events, and in particular their intention to investigate the applicant's involvement in the events. Given that the applicant was a politician, the authorities might have considered it necessary to keep the public informed of the criminal accusations against him. However, the Court considers that the statement, assessed as a whole, was not made with necessary discretion and circumspection. Whereas in the end of the relevant paragraph the authorities noted that the applicant's actions would be "fully and thoroughly investigated and [would] receive legal assessment", this wording was negated by a preceding unequivocal declaration, contained in the same sentence, that those actions by the applicant had been "illegal". Moreover, by stating in the same paragraph that "it has been established that ... [the applicant] ... made appeals to local residents ..., such as calls to resist the police, not to obey officials and to block roads", the authorities essentially prejudged the assessment of the facts by the courts. As such, the impugned statement could not but have encouraged the public to believe the applicant guilty before he had been proved guilty according to law.

128. There has accordingly been a violation of Article 6 § 2 of the Convention.

VI. ALLEGED VIOLATIONS OF ARTICLES 13 AND 14 OF THE CONVENTION

129. Relying on Articles 13 and 14 of the Convention in conjunction with the above complaints, the applicant complained that the domestic remedies in his case had been ineffective and that he had been discriminated against on political grounds. Article 13 provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14 provides as follows:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

130. The Government argued that there had been no breach of those Convention provisions. The applicant reiterated his complaints.

131. The Court notes that these complaints are linked to those examined above and must therefore likewise be declared admissible.

132. However, having regard to its above finding in relation to Article 5 §§ 1 and 4 and Article 6 § 2 of the Convention, the Court considers that it is not necessary to examine whether in this case there has been a violation of Articles 13 and 14.

VII. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION

133. The applicant complained under Article 18 that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, his arrest and the criminal proceedings against him were repressive measures and had the purpose of "removing" him as a critic of the Government and a potentially serious opponent in the upcoming presidential elections, as well as discouraging others from criticising the Government. Article 18 provides as follows:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

134. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

135. The Government admitted that various circumstances surrounding the applicant's political activities could not be ignored and that it could be suggested that his political ambitions "went counter to the mainstream line of the administration" of the country. However, any person in a similar

position could make similar allegations and, in reality, it would have been impossible to prosecute a suspect with the applicant's profile without far-reaching political consequences. The fact that the suspect's political opponents might directly or indirectly benefit from his being detained should not prevent the authorities from prosecuting such a person if there were serious charges against him. The Government noted that statements and resolutions of various political institutions, public figures and NGOs made in respect of the applicant's case might raise certain suspicion as to the authorities' real intent. However, such suspicion is not sufficient for the Court to conclude that the whole legal machinery of the respondent State in the present case was *ab initio* misused and that, from the beginning to the end, the authorities were acting in bad faith and in blatant disregard of the Convention. That would be a very serious claim requiring an incontrovertible and direct proof. However, in this case, such proof was absent. Therefore, the Government argued that no breach of Article 18 should be found in the present case.

136. The applicant reiterated that the real purpose of restricting his rights under Articles 5, 6, 13 and 14 of the Convention was to eliminate him as potentially one of the most serious opponents of the ruling party in the upcoming presidential election. He argued that the authorities had been planning to arrest him and remove him from public life for months, and that the events in Ismayilli were seen by them as a "good opportunity" to implement this plan. He further noted that his blog postings about the events in Ismayilli had also been a reason for his persecution, as he had first been "invited" to the Prosecutor General's Office a day after his blog posting of 28 January 2013 which contained information that had "exploded" the newspaper headlines in the country. The applicant also referred to the statements and resolutions by international organisations, local and international NGOs and various officials, expressing deep concern over, or strongly condemning, the applicant's arrest and noting that it gave rise to justified doubts and legitimate concerns that the criminal case against him was politically motivated and constituted an attempt to intimidate the opposition.

2. The Court's assessment

137. The Court emphasises that Article 18 of the Convention does not have an autonomous role. It can only be applied in conjunction with other Articles of the Convention (see *Gusinskiy v. Russia*, no. 70276/01, § 75, ECHR 2004-IV). As it has previously held in its case-law, the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. Indeed, any public policy or individual measure may have a "hidden agenda", and the presumption of good faith is rebuttable. However, an applicant alleging that his rights and freedoms were limited for an improper reason must convincingly show that

the real aim of the authorities was not the same as that proclaimed or which could be reasonably inferred from the context. A mere suspicion that the authorities used their powers for some other purpose than those defined in the Convention is not sufficient to prove that Article 18 was breached (see *Khodorkovskiy v. Russia*, no. 5829/04, § 255, 31 May 2011).

138. When an allegation under Article 18 of the Convention is made, the Court applies a very exacting standard of proof. As a consequence, there are only a few cases where a breach of that Convention provision has been found. Thus, in *Gusinskiy* (cited above, §§ 73-78), the Court accepted that the applicant's liberty had been restricted, *inter alia*, for a purpose other than those mentioned in Article 5. It based its findings on an agreement signed between the detainee and a federal Minister for the Press, from which it was clear that the applicant's detention had been applied in order to make him sell his media company to the State. In *Cebotari v. Moldova* (no. 35615/06, §§ 46 et seq., 13 November 2007) the Court found a violation of Article 18 of the Convention in a context where the applicant's arrest was visibly linked to an application pending before the Court. In *Lutsenko v. Ukraine* (no. 6492/11, §§ 108-09, 3 July 2012) the prosecuting authorities seeking the applicant's arrest explicitly indicated the applicant's communication with the media as one of the grounds for his arrest, such reasoning clearly demonstrating that his arrest was an attempt to punish him for publicly disagreeing with accusations against him. In *Tymoshenko v. Ukraine* (no. 49872/11, § 299, 30 April 2013) the reasoning formally advanced by the authorities suggested that the actual purpose of the detention was to punish the applicant for a lack of respect towards the court which it was claimed she had been manifesting by her behaviour during the judicial proceedings. Furthermore, both the *Lutsenko* and *Tymoshenko* cases were similar in their circumstances in that both applicants who were former high-ranking Government officials and leaders of opposition parties were, soon after the change of power, accused of abuse of power and the authorities' actions against them were considered by the public to be part of the politically motivated prosecution of opposition leaders in Ukraine. However, in both cases, the Court chose to look at the matter separately from this general context of the allegedly politically motivated prosecution, because in each case it could discern other specific features (described above) which led to a finding of a breach of Article 18 (see *Lutsenko*, cited above, § 108, and *Tymoshenko*, cited above, §§ 296 and 298-99).

139. In the present case, the applicant's complaint under Article 18 was raised in conjunction with all of his other complaints under Articles 5, 6, 13 and 14. The Court will confine its examination to the applicant's complaint under Article 18 taken in conjunction with Article 5 concerning his pre-trial detention.

140. The Court takes note of the various opinions about the applicant's case which suggest that he was subjected to politically motivated

prosecution. However, as the political process and adjudicative process are fundamentally different, the Court must base its decision on "evidence in the legal sense" and its own assessment of the specific relevant facts (see, *mutatis mutandis*, *Khodorkovskiy*, cited above, § 259). The Court notes that the circumstances of the present case suggest that the applicant's arrest and detention had distinguishable features which allow the Court to analyse the situation independently of various opinions voiced in connection with this case.

141. The Court has found above that the charges against the applicant were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention (contrast *Khodorkovskiy*, cited above, § 258, and compare *Lutsenko*, cited above, § 108). Thus, the conclusion to be drawn from this finding is that the authorities have not been able to demonstrate that they acted in good faith. However, that conclusion in itself is not sufficient to assume that Article 18 was breached, and it remains to be seen whether there is proof that the authorities' actions were actually driven by improper reasons.

142. The Court considers that, in the present case, it can be established to a sufficient degree that such proof follows from the combination of the relevant case-specific facts. In particular, the Court refers to all the material circumstances which it has had regard to in connection with its assessment of the complaint under Article 5 § 1 (c) (see paragraph 92 above), and considers them equally relevant in the context of the present complaint. Moreover, it considers that the applicant's arrest was linked to the specific blog entries made by the applicant on 25, 28 and 30 January 2013. The blog post of 28 January 2013, in particular, included sourced information shedding light on the "true causes" of the Ismayilli protests, which the Government reportedly attempted to withhold from the public and which was immediately picked up by the press. Following the applicant's blog entry, the information cited by the applicant was promptly removed from the websites of the Ministry of Culture and Tourism and the Ministry of Taxes (see paragraph 13 above). Even though the prosecution did not make any express references to the applicant's blog entries, the Court notes that the accusations against him were first made in the authorities' official press statement of 29 January 2013, immediately after the applicant's blog post of 28 January 2013, and he was first "invited" to the Prosecutor General's Office for questioning on the same day. Whereas by that time several days had passed from the applicant's visit of Ismayilli on 24 January 2013, there is nothing in the case file to show that the prosecution had any objective information giving rise to a *bona fide* suspicion against the applicant at that time, and it has not been shown that they were in possession of any such information or witness statements at any point up to the moment of the applicant's arrest on 4 February 2013.

143. The above circumstances indicate that the actual purpose of the impugned measures was to silence or punish the applicant for criticising the Government and attempting to disseminate what he believed was the true information that the Government were trying to hide. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c) of the Convention.

144. The Court considers this sufficient basis for finding a violation of Article 18 of the Convention taken in conjunction with Article 5.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

145. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

146. The applicant claimed 10,000 euros (EUR) in respect of pecuniary damage, without specifying any particular pecuniary loss and without submitting any documents in support of the claim.

147. The Government asked the Court to reject the claim.

148. The Court notes that the claim in respect of the pecuniary damage lacks necessary substantiation. It must therefore be rejected.

2. Non-pecuniary damage

149. The applicant claimed EUR 20,000 in respect of non-pecuniary damage caused by serious mental suffering and the feeling of helplessness inflicted by the arbitrary and unlawful conduct of the domestic authorities.

150. The Government disagreed, noting that an element of suffering was inevitably associated with deprivation of liberty.

151. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations, and that compensation has thus to be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 20,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

152. The applicant also claimed EUR 2,000 for legal fees and EUR 100 for postal expenses. In support of this claim, he submitted a copy of the contract for legal services in connection with his application lodged with the Court.

153. The Government maintained that those claims were not supported by relevant documentary evidence.

154. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 for the proceedings before the Court.

C. Default interest

155. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under Article 5 §§ 1, 3 and 4, Article 6 § 2 and Articles 13, 14 and 18 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 5 § 3 of the Convention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

5. *Holds* that there has been a violation of Article 6 § 2 of the Convention;

6. *Holds* that there is no need to examine the complaints under Articles 13 and 14 of the Convention;

7. *Holds* that there has been a violation of Article 18 of the Convention taken in conjunction with Article 5 of the Convention;

8. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into New Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 May 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President