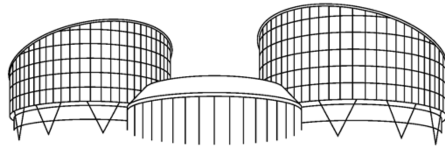

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MAMMADOV AND ABBASOV v. AZERBAIJAN

(*Application no. 1172/12*)

JUDGMENT

Art 5 § 1 • Lawful detention • Undocumented deprivation of liberty of first applicant for around one hour in a car by plain clothes police officers
Art 10 • Freedom of expression • Unjustified seizure of journalistic equipment and unlawful detention during performance of applicants' professional duties

STRASBOURG

8 July 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Mammadov and Abbasov v. Azerbaijan,

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

Síofra O'Leary, *President,*
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Ivana Jelić,
Arnfinn Bårdsen,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 1172/12) 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 two Azerbaijani nationals, Mr Elnur Akif oglu Mammadov (*Elnur Akif oğlu Məmmədov* - "the first applicant") and Mr Idrak Telman oglu Abbasov (*İdrak Telman oğlu Abbasov* - "the second applicant") ("the applicants"), on 7 December 2011;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints Articles 5, 10 and 13 of the Convention and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 15 June 2021,

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

INTRODUCTION

1. Relying on Articles 10 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants allege that their right to freedom of expression was breached on account of an unjustified interference of the police with their journalistic activity. Relying on Articles 5 and 13 of the Convention, the first applicant also alleges that he was unlawfully deprived of his liberty by the police.

THE FACTS

2. The applicants were born in 1984 and 1976 respectively and at the material time lived in Baku. They were represented by Mr R. Hajili and Mrs Z. Zakaryayeva (Sadigova), lawyers based in France and Azerbaijan respectively. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

3. At the time of the events described below, the applicants were reporters of the Institute for Reporters' Freedom and Safety ("the IRFS"), a

Baku-based non-governmental organisation specialised in the protection of journalists' rights.

I. THE APPLICANTS' ACCOUNT OF THE EVENTS OF 8 OCTOBER 2009

4. On 8 October 2009 the editor in chief of *Milli Yol newspaper* ("the newspaper"), S.A., informed the IRFS that a reporter (R.M.) of the newspaper had been apprehended and taken to the Ministry of Internal Affairs ("the MIA") where he had been questioned about the publication of an article. S.A. also informed the IRFS that an operation led by police officers in plain clothes was ongoing on the newspaper's premises.

5. At around 7.30 p.m. on 8 October 2009 the applicants arrived at the newspaper's office to collect information about the ongoing police operation. When they arrived, the building was surrounded by police officers in plain clothes who were searching the office and questioning S.A. When the applicants began video recording the event, the police officers in plain clothes prevented them from filming and seized their equipment (two video cameras and one photo camera). The police officers in plain clothes dragged the first applicant into a car together with S.A. and drove off to an unknown direction.

6. Immediately after this incident, at around 7.45 p.m. the president of the IRFS, E.H., contacted the spokesperson of the MIA and informed him of the actions taken against the applicants by the police officers in plain clothes. The spokesperson of the MIA answered that he would deal with the issue.

7. According to the first applicant, after a ride of approximately an hour in the car, the police officers in plain clothes dropped him at an unspecified location unknown to him at the material time and then took S.A to the MIA. When in the car, the first applicant was not allowed to contact anyone. During the ride, the police officers in plain clothes were reporting about the operation to their superiors and, after consultation with their superiors, dropped him on the way, without returning the video and photo cameras to him.

8. According to the applicants, at around 10 p.m. on the same day S.A. and R.M. were released from the MIA and the applicants' equipment was handed over to S.A. in order to be returned to the applicants. The equipment was in good condition, but all video footage and photos, including the ones taken during the police operation in respect of the newspaper, had been removed from the memory cards of the cameras.

9. The events of 8 October 2009 were widely covered in the media.

10. The Government did not make any submissions on the applicants' account of the events of 8 October 2009.

II. REMEDIES USED BY THE APPLICANTS

11. On 3 December 2009 the applicants lodged a complaint with the MIA, asking that criminal proceedings be instituted on account of the interference with their journalistic activity by the police officers in plain clothes on 8 October 2009. The first applicant also complained of his unlawful deprivation of liberty for a period of one hour.

12. By a decision of 30 December 2009, an investigator at the Organised Crime Department ("the OCD") of the MIA refused to institute criminal proceedings for lack of criminal element. The investigator found that the applicants' allegations had not been proven and that the applicants had failed to specify the identity of the persons involved in the alleged actions against them. The investigator also found that there was no interference with the applicants' property rights, as they themselves had submitted that their equipment had been returned to them in good condition. The applicants were not provided with a copy of that decision.

13. On 29 March 2010 the applicants lodged a complaint with the Sabail District Court, asking the court to declare unlawful the inaction of the MIA in connection with their complaint of 3 December 2009.

14. According to the applicants, on 26 May 2010, in the course of the proceedings before the Sabail District Court, they learned for the first time about the investigator's decision of 30 December 2009 refusing to institute criminal proceedings.

15. On 2 June 2010 the applicants lodged a complaint with the Narimanov District Court against the investigator's decision of 30 December 2009. In their complaint, the applicants described the circumstances of the events of 8 October 2009 and reiterated their complaints. They also challenged the investigator's findings, arguing that the fact that their equipment had been returned to them in good condition could not be interpreted as meaning that there had been no interference with their journalistic activities. In that connection, they pointed out that the fact that their equipment had been handed over to S.A. upon his release from the MIA confirmed that those who had taken their equipment had been the police officers. They also asked the court to question S.A., R.M., E.H. and the spokesperson of the MIA about the events of 8 October 2009.

16. On 17 June 2010 the Narimanov District Court declared unlawful the investigator's decision of 30 December 2009 and quashed it. It ordered the OCD of the MIA to conduct further investigation in connection with the applicants' complaints. In particular, the court found that the investigator in charge of the case had not conducted a thorough investigation and had failed to question even the applicants. The court also noted that despite its explicit request the investigator had failed to submit the relevant case material on which the decision of 30 December 2009 had been based.

17. On 19 July, 12 August and 27 September 2010 the applicants asked for information about the progress of the investigation following the Narimanov District Court's decision of 17 June 2010 but did not receive any response.

18. On 11 October 2010 the applicants lodged an action with the Narimanov District Court, asking the court to declare unlawful the investigator's failure to investigate their complaints and to order him to investigate further.

19. On 1 November 2010 the Narimanov District Court refused to admit the complaint on the grounds that the applicants had not paid the relevant court fees.

20. On 29 December 2010 the applicants resubmitted their complaint, together with a receipt of payment of court fees.

21. By a decision of 10 January 2011, the Narimanov District Court dismissed the complaint, finding that the applicants should have lodged a criminal complaint with the court in accordance with the judicial review procedure under the Code of Criminal Procedure.

22. On 15 February 2011 the applicants lodged a criminal complaint with the Narimanov District Court under the judicial review procedure, reiterating their previous request (see paragraph 18 above).

23. By a decision of 4 March 2011, the Narimanov District Court rejected the complaint on the grounds that it had been lodged against the investigator of the OCD, not the OCD itself.

24. On 11 April 2011 the applicants re-lodged the same criminal complaint, but indicating the OCD and the investigator as the respondents.

25. On 3 May 2011 the Narimanov District Court rejected the complaint on the grounds that the applicants did not indicate the OCD, but the investigator of the OCD as a respondent in their complaint.

26. On 6 May 2011 the applicants appealed against that decision, submitting that they had mentioned the OCD as a respondent in their complaint.

27. On 10 June 2011 the Baku Court of Appeal upheld the first-instance court's decision of 3 May 2011. The appellate court's decision was not amenable to appeal.

RELEVANT LEGAL FRAMEWORK

I. THE CODE OF CRIMINAL PROCEDURE

28. In accordance with Article 37 of the Code of Criminal Procedure ("the CCrP"), criminal proceedings are instituted on the basis of a complaint by the victim of an alleged criminal offence.

29. In accordance with Article 207 of the CCrP, an investigator or the prosecutor in charge of the case, after the examination of information about

the commission of a criminal offence, should adopt a decision instituting criminal proceedings, a decision refusing to institute criminal proceedings or a decision transmitting the information to the relevant investigating authority or the court, in case of private criminal prosecution.

30. In accordance with Article 212.2 of the the CCrP, a copy of a decision to refuse the institution of criminal proceedings shall be provided to the person who had submitted information about an alleged criminal offence within twenty-four hours of the decision having been taken.

31. Chapter LII of the CCrP lays down the procedure by which parties to criminal proceedings may challenge actions or decisions of the prosecuting authorities before a court. Article 449 provides that a victim or counsel may challenge such actions or decisions concerning, *inter alia*, a refusal to institute criminal proceedings, or the suspension or termination of criminal proceedings. The judge examining the lawfulness of the prosecuting authorities' actions or decisions may quash them if he or she finds them to be unlawful (Article 451). The judge's decision may be challenged before an appellate court in accordance with the procedure set out in Articles 452 and 453 of the CCrP.

II. THE CRIMINAL CODE

32. Obstruction of the lawful professional activity of journalists by subjecting them to violence or threatening such violence is a crime punishable by a fine or correctional work for a term up to one year (Article 163.1). If the same act was committed by an official performing his service position, it is punishable by correctional work for a term up to two years or imprisonment for a term up to one year (Article 163.2).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

33. Relying on Articles 5 §§ 1 and 2 and 13 of the Convention, the first applicant complained that his arrest and detention on 8 October 2009 had been unlawful and that he had had no effective remedy in that connection. The Court considers that the present complaint falls to be examined solely under Article 5 § 1 of the Convention (see *Mammadov and Others v. Azerbaijan*, no. 35432/07, § 81, 21 February 2019), which, in so far as relevant, 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:
>
> (a) the lawful detention of a person after conviction by a competent court;

> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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; ...”

A. Admissibility

1. The parties’ submissions

34. The Government submitted that the first applicant had failed to exhaust domestic remedies. In particular, the domestic courts had refused to examine his complaint since he had failed to comply with procedural rules on lodging a complaint in accordance with the judicial review procedure.

35. The first applicant disagreed with the Government’s submissions and maintained his complaint.

2. The Court’s assessment

36. The relevant general principles on exhaustion of domestic remedies have been summarised in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 71-73, 25 March 2014) and *Shuriyya Zeynalov v. Azerbaijan* (no. 69460/12, § 38, 10 September 2020).

37. The Court notes that the provisions of the CCrP concerning the judicial review procedure, to which the Government referred, allow to challenge before the domestic courts the prosecuting authorities’ actions or decisions to suspend or terminate criminal proceedings, or to refuse to institute them. However, in the present case following the Narimanov District Court’s decision of 17 June 2010 overturning the investigator’s decision of 30 December 2009 to refuse to institute criminal proceedings, the criminal inquiry relating to the first applicant’s complaint was still ongoing, even at the time of the most recent communication with the parties. Therefore, even assuming that the first applicant complied with procedural rules on lodging a complaint in accordance with the judicial review procedure, in the absence of a new decision by the investigating authorities to refuse to institute criminal proceedings, he could not have challenged the investigator’s actions before the domestic courts (see *Huseynova v. Azerbaijan*, no. 10653/10, §§ 80-81, 13 April 2017).

38. For the above reasons, the Court finds that the first applicant’s complaint cannot be rejected for non-exhaustion of domestic remedies, and that the Government’s objection in this regard must be dismissed.

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

B. Merits

1. The parties' submissions

40. The first applicant maintained his complaint.

41. The Government contested the first applicant's submissions. Relying on the investigator's decision of 30 December 2009, they submitted that the first applicant's complaints had been investigated and his alleged deprivation of liberty had not been confirmed.

2. The Court's assessment

42. The Court reiterates that in proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person. Accordingly, it is not concerned with mere restrictions on liberty of movement, which are governed by Article 2 of Protocol No. 4 to the Convention, with regard to persons lawfully within the territory of that State. In order to determine whether someone has been "deprived of his liberty" within the meaning of Article 5, the starting-point must be his or her specific situation, and account must be taken of a whole range of factors such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation and restriction of liberty is one of degree or intensity, and not one of nature or substance (see *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 211-212, 21 November 2019, and *Z.A. and Others v. Russia* [GC], nos. 61411/15 and 3 others, §§ 133-34, 21 November 2019).

43. The characterisation or lack of characterisation given by a State to a factual situation cannot decisively affect the Court's conclusion as to the existence of a deprivation of liberty (see *Creangă v. Romania* [GC], no. 29226/03, § 92, 23 February 2012).

44. The Court reiterates its established case-law to the effect that Article 5 § 1 may also apply to deprivations of liberty of a very short length (see, among many authorities, *M.A. v. Cyprus*, no. 41872/10, § 190, ECHR 2013, and *Zelčs v. Latvia*, no. 65367/16, §§ 34-41, 20 February 2020).

45. The Court notes that in the present case while the first applicant maintained that on 8 October 2009 he had been deprived of his liberty during around one hour in a car by police officers in plain clothes, the Government contested the applicant's submissions relying on the findings of the investigator's decision of 30 December 2009 (see paragraph 12 above).

46. However, the Court cannot accept the Government's reliance on that decision since on 17 June 2010 the Narimanov District Court quashed it and found that the investigator had failed to conduct a thorough investigation (see paragraph 16 above). The Narimanov District Court also ordered the OCD of the MIA to conduct further investigation, but there is no information that it was carried out by the investigating authorities (see paragraph 37 above).

47. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights. While it is for the applicant to make a prima facie case and adduce appropriate evidence, if the respondent Government in their response to his allegations fail to disclose crucial documents to enable the Court to establish the facts or otherwise provide a satisfactory and convincing explanation of how the events in question occurred, strong inferences can be drawn (see *Al Nashiri v. Romania*, no. 33234/12, §§ 491-92, 31 May 2018).

48. The Court notes that the first applicant presented a detailed description of the circumstances of his alleged deprivation of liberty by the police officers in plain clothes on 8 October 2009 (see paragraph 7 above). His version of the events was supported by the second applicant. He also asked the domestic court to question S.A., R.M., E.H. and the spokesperson of the MIA about the events of 8 October 2009 (see paragraph 15 above).

49. In that connection, the Court does not lose sight of the fact that at no point did the investigator or the domestic courts express any doubt as to the reliability of the applicants' submissions that their equipment seized by the police officers in plain clothes had been returned to them at around 10 p.m. on 8 October 2009 when S.A. had been released from the MIA. While the Court cannot rely on the conclusions contained in the investigator's decision of 30 December 2009 as it was quashed as being unlawful, it is noteworthy that, insofar as the facts were concerned, the investigator simply indicated that the equipment in question had been in good condition when it had been returned to the applicants.

50. The Court also cannot overlook the fact that the events surrounding the operation led by the police on the newspaper's premises on 8 October 2009 was widely covered by the media at the material time (see paragraph 9 above).

51. Lastly, the Court takes heed of the fact that despite the Narimanov District Court's explicit request the investigator failed to provide that court with the relevant case material on which the decision of 30 December 2009 had been based (see paragraph 16 above), thus making it impossible for the first applicant to consult it.

52. In these circumstances, serious questions arose in relation to the first applicant's complaint under Article 5 which obviously called for concrete answers and comments on the facts. Therefore, in view of the Government's failure to provide any evidence capable of rebutting the first applicant's version of the events and given the consistent and plausible nature of the first applicant's submissions, the Court finds that on 8 October 2009 the first applicant was deprived of his liberty during around one hour in a car by police officers in plain clothes.

53. As regards the question of whether the first applicant's detention during this period was "lawful" within the meaning of Article 5 § 1 of the Convention, the Court notes that it was not documented at all. The Court reiterates in this connection that the unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention, and discloses a grave violation of that provision (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV; *Nagiyev v. Azerbaijan*, no. 16499/09, § 64, 23 April 2015; and *Mammadov and Others*, cited above, § 89).

54. There has accordingly been a violation of Article 5 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

55. Relying on Articles 10 and 13 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complained of a breach of their Convention rights in that police officers in plain clothes had prevented them from recording the ongoing police operation by seizing their journalistic equipment (two video cameras and one photo camera) and removing the memory cards from that equipment. The first applicant also complained that his deprivation of liberty had amounted to an unjustified interference with his right to freedom of expression. The Court considers that the applicants' complaints fall to be examined solely under Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of

national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

56. The Court observes that the parties' submissions in this regard are identical to those concerning the admissibility of the first applicant's complaint that he was deprived of his liberty contrary to Article 5 of the Convention. It considers that the same principles as those set out above apply and refers to its conclusion that the Government's objections concerning exhaustion of domestic remedies must be rejected (see paragraphs 36-38 above).

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

B. Merits

1. The parties' submissions

58. The applicants submitted that the events complained of disclosed an interference with their freedom of expression which had been unlawful, had pursued no legitimate aim and had not been necessary in a democratic society.

59. The Government contested the applicants' submissions, pointing out that their allegations had been investigated and had not been proven.

2. The Court's assessment

60. The Court reiterates that public measures preventing journalists from doing their work or adversely affecting the exercise of their journalistic functions may raise issues under Article 10 (see *Gsell v. Switzerland*, no. 12675/05, § 49, 8 October 2009; *Najafli v. Azerbaijan*, no. 2594/07, § 36, 2 October 2012; and *Pentikäinen v. Finland* [GC], no. 11882/10, § 83, ECHR 2015). In the instant case, it is undisputed that the applicants were present on the premises of the newspaper on 8 October 2009 to collect information about the ongoing police operation and to report on the event; that is, they were doing their journalistic work. The Court refers to its above findings concerning the consistent and plausible nature of the first applicant's submissions and the Government's failure to provide any evidence capable of rebutting his version of events (see paragraph 52 above). In particular, the Court observed that neither the investigating authorities nor the domestic courts contested the applicants' submissions that their journalistic equipment had been returned to them at around

10 p.m. on 8 October 2009 when S.A. had been released from the MIA (see paragraph 49 above). The Court has also established that on 8 October 2009 the first applicant was deprived of his liberty during around one hour in a car by police officers in plain clothes (see paragraph 52 above).

61. In that connection, the Court considers it necessary to reiterate that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *Goodwin v. the United Kingdom*, 27 March 1996, § 39, *Reports of Judgments and Decisions* 1996-II). It is incumbent on the press to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them (see, among other authorities, *The Sunday Times v. the United Kingdom (no. 2)*, 26 November 1991, § 50, Series A no. 217; *Najafli*, cited above, § 36; and *Pentikäinen*, cited above, §§ 88-89). This undoubtedly includes, like in the present case, reporting on an ongoing police operation on the premises of a newspaper. Were it otherwise, the press would be unable to play its vital role of "public watchdog".

62. In these circumstances, the Court does not consider it necessary to establish whether the video footage and photos were removed from the memory cards of the applicants' journalistic equipment as argued by the applicants since the foregoing considerations are sufficient to enable it to conclude that the seizure of the applicants' journalistic equipment and the first applicant's deprivation of liberty for one hour while the applicants were performing their professional duties seriously hampered their exercise of the right to receive and impart information. Indeed, the Court notes that, at the material time, the applicants had been seeking precisely to collect and impart information about a police operation in relation to fellow journalists and the newspaper where they worked. The Court therefore accepts that there was an interference with their right to freedom of expression.

63. As regards the question whether the interference was justified, the Court observes that it was not shown by the Government that it was either lawful or pursued any legitimate aim. In any event, it is clear that such interference, in circumstances where, as in the present case, there is no indication that the applicants acted in breach of the law (see, by contrast, *Stoll v. Switzerland* [GC], no. 69698/01, § 102, ECHR 2007-V), could not be considered as "necessary in a democratic society" within the meaning of paragraph 2 of Article 10.

64. There has accordingly been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicants claimed 2,000 euros (EUR) each in respect of pecuniary damage on account of the seizure of their journalistic equipment and removal of the memory cards from this equipment.

67. The Government did not submit comments in that connection.

68. The Court notes that it is undisputed that the applicants' journalistic equipment had been returned to them. In any event, even assuming a causal link between the pecuniary damage alleged, in particular as regards the memory cards, and the violations found, the Court notes that the applicants did not submit relevant documentary evidence supporting this claim. The Court therefore rejects it.

2. Non-pecuniary damage

69. The first applicant claimed EUR 10,000 and the second applicant EUR 7,000 in respect of non-pecuniary damage.

70. The Government submitted that the applicants had failed to substantiate their claims under this head and that finding a violation would constitute sufficient reparation.

71. The Court considers that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the first applicant the sum of EUR 6,000 and the second applicant the sum of EUR 4,500 under this head, plus any tax that may be chargeable on those amounts.

B. Costs and expenses

72. The applicants claimed 3,100 Azerbaijani manats (AZN) each for the legal costs incurred in the proceedings before the domestic courts and the Court. They submitted the relevant contracts concluded with one of their representatives before the Court, Mr R. Hajili, and with another lawyer who did not represent them before the Court.

73. The Government considered that the amounts claimed by the applicants were excessive and unsubstantiated.

74. 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 were 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 amount of work carried out by the applicants' representatives, the Court considers it reasonable to award each applicant the sum of EUR 1,000 for costs and expenses in the domestic proceedings and before the Court, plus any tax that may be chargeable to the applicants.

C. Default interest

75. 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 application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention in respect of the first applicant;

3. *Holds* that there has been a violation of Article 10 of the Convention in respect of both applicants;

4. *Holds*
   (a) that the respondent State is to pay the applicants, 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 the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros) to the first applicant and EUR 4,500 (four thousand five hundred euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), to each applicant, plus any tax that may be chargeable to the applicants, 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;

5. *Dismisses*, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 July 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Martina Keller
Deputy Registrar

Síofra O'Leary
President