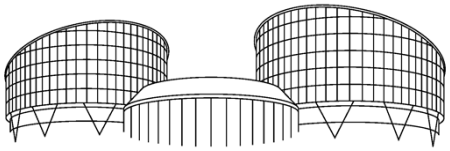

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SAVALANLI AND OTHERS v. AZERBAIJAN

(Applications nos. 54151/11 and 3 others –
see appended list)

JUDGMENT

Art 5 § 1 (c) • Lawful arrest or detention • Minimum standard of "reasonableness of suspicion" not met Art 5 § 4 • Review of lawfulness of detention • Inadequate review by domestic courts

STRASBOURG

15 December 2022

FINAL

15/03/2023

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

In the case of Savalanli and Others v. Azerbaijan,

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

Marko Bošnjak*, President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström*, judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the applications (nos. 54151/11, 76631/14, 76644/14 and 7683/15) 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 four Azerbaijani nationals, Mr Jabbar Novruz oglu Savalanli (*Cabbar Novruz oğlu Savalanlı* – "the first applicant"), Mr Faraj Ragif oglu Karimov (*Fərəc Raqif oğlu Kərimov* – "the second applicant"), Mr Siraj Ragif oglu Karimli (*Sirac Raqif oğlu Kərimli* –"the third applicant") and Mr Murad Gulahmad oglu Adilov (*Murad Güləhməd oğlu Ədilov* – "the fourth applicant") ("the applicants"), on the various dates indicated in the appended table;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning the alleged absence of a reasonable suspicion that the applicants had committed a criminal offence (Article 5 § 1 (c) of the Convention), the alleged lack of justification for the applicants' pre-trial detention (Article 5 § 3 of the Convention) and the alleged inadequacy of the judicial review of the applicants' pre-trial detention (Article 5 § 4 of the Convention) and an issue raised by the Court of its own motion under Article 18 of the Convention in respect of all the applicants, as well as the complaints concerning the alleged unrecorded detention of the first applicant (Article 5 § 1 of the Convention), the alleged hindrance to the exercise of the first applicant's right of individual petition (Article 34 of the Convention) and the alleged breach of the fourth applicant's right to the presumption of innocence (Article 6 § 2 of the Convention), and to declare the remainder of the applications inadmissible;

the decision of the President of the Section to give Mr I. Aliyev leave to represent the first applicant in the proceedings before the Court (Rule 36 § 4 (a) *in fine* of the Rules of Court);

the parties' observations;

Having deliberated in private on 22 November 2022,

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

INTRODUCTION

1. Relying on Article 5 of the Convention, the applicants alleged that they had been unlawfully detained in the absence of a reasonable suspicion that they had committed a criminal offence and that the domestic courts had failed to justify their pre-trial detention and had not properly assessed the arguments in favour of their release. They alleged in their observations, relying on Article 18 of the Convention, that their Convention rights had been restricted for purposes other than those prescribed in the Convention. Some of the applicants also raised various other complaints under Article 5, Article 6 § 2 and Article 34 of the Convention.

THE FACTS

2. The applicants' details and the names of their representatives are listed in the Appendix. The first applicant was granted legal aid in the proceedings before the Court.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case may be summarised as follows.

I. APPLICATION NO. 54151/11

5. At the time of the events the first applicant was a student at Sumgayit State University and an active member of the Azerbaijan National Front Party.

6. At around 8.30 p.m. on 5 February 2011 the first applicant was in front of the building where he resided when he was arrested by plain-clothes police officers. According to a record dated 5 February 2011 relating to the carrying out of operational measures and the seizure of physical evidence (*əməliyyat tədbirlərinin keçirilməsi və maddi sübutun götürülməsi haqqında protokol*), the first applicant was arrested on the basis of operational information that he was in possession of drugs. He did not resist arrest and was taken to the Sumgayit City Police Office, where he was searched in the presence of two police officers and two attesting witnesses. It appears from the record that the applicant was not represented by a lawyer. During the search, drugs (opium) were found on his person. According to the record, the first applicant admitted that the drugs in question belonged to him. The record cited Articles 207.4 and 445.2 of the Code of Criminal Procedure ("the CCrP") and Article 11.4.3 of the Law on Operational-Search Activities of 28 October 1999 ("the Law of 28 October 1999") as the legal basis for conducting the above-mentioned operational measures.

7. At 11.30 p.m. on the same day a search was conducted at the first applicant's home, but no drugs were found.

8. At 2.45 a.m. on 6 February 2011 a police investigator drew up the record of the first applicant's arrest (*cinayət törətməkdə şübhəli şəxsin tutulması haqqında protokol*). The record was drawn up without a lawyer present and was signed by the first applicant and the investigator.

9. On 6 February 2011 the investigator questioned the first applicant as a suspect. The first applicant stated that the drugs found on him belonged to him. However, he said that he had never used drugs before and wanted to try them for the first time. The record shows that the questioning of the first applicant began at 3.20 a.m. and ended at 4.15 a.m. and was conducted without a lawyer present.

10. On 6 February 2011 criminal proceedings were instituted against the first applicant under Article 234.1 (illegal possession of a quantity of drugs exceeding that necessary for personal use without intent to sell) of the Criminal Code. The decision referred to the fact that 0.74 grams of opium had been found on the first applicant during the search carried out on 5 February 2011.

11. On 7 February 2011 the first applicant was charged with the criminal offence under Article 234.1 of the Criminal Code.

12. On 7 February 2011 the investigator questioned the first applicant as an accused in the presence of his lawyer. The first applicant denied that the drugs in question belonged to him, stating that he had made his previous statements under psychological pressure from the investigator.

13. On 7 February 2011 the Sumgayit City Court ordered the first applicant's detention for a period of two months, calculating the period of detention from 5 February 2011. It appears from the court decision that the first applicant stated at the court hearing that the drugs did not belong to him and that he had made his initial statements under psychological pressure from the police officer F.M. The first applicant's representatives also stated that on 6 February 2011 he had been questioned without a lawyer present at 3 a.m. and that, although he had been arrested at 8.30 p.m. on 5 February 2011, his arrest had been documented only at 2.45 a.m. on 6 February 2011. The Sumgayit City Court, without addressing the first applicant's specific complaints, held that there was sufficient reasonable suspicion that he had committed the criminal acts attributed to him.

14. On 10 February 2011 the first applicant appealed against that decision, claiming that his detention was unlawful. He submitted in particular that there was no reasonable suspicion that he had committed a criminal offence and that the first-instance court had failed to justify his pre-trial detention.

15. On 16 February 2011 the Sumgayit Court of Appeal upheld the first-instance court's decision.

16. On 23 February 2011 the Sumgayit City Court dismissed the first applicant's application to be released on bail or put under house arrest rather than being held in pre-trial detention, finding it unfounded.

17. On 2 March 2011 the Sumgayit Court of Appeal upheld the first-instance court's decision.

18. No further decision concerning the extension of the first applicant's pre-trial detention is available in the case file.

19. On 4 May 2011 the Sumgayit City Court found the first applicant guilty under Article 234.1 of the Criminal Code and sentenced him to two years and six months' imprisonment.

II. APPLICATION NO. 76631/14

20. At the time of the events the second applicant was an active member of the Musavat Party. He was also the administrator of the official website of the Musavat Party.

21. On 22 July 2014 a police officer made a written report to the acting head of the Organised Crime Department of the Ministry of Internal Affairs ("the OCD") informing him of the alleged involvement of the second applicant in drug trafficking and asked him to authorise operational-search measures in that connection.

22. On the same date the acting head of the OCD took a decision relating to the carrying out of operational-search measures (*əməliyyat-axtarış tədbirlərinin həyata keçirilməsinə dair*), ordering the constitution of an operational group to identify and unmask (*müəyyən edilib ifşa olunması*) the second applicant. The decision also ordered an inspection on the person (*üzərinə baxış keçirilsin*) of the second applicant. It cited Article 10.4 of the Law of 28 October 1999 and Article 445.2 of the CCrP as the legal basis for the operational-search measure ordered, without giving any further explanation as to why it should be conducted without a prior judicial warrant. It also indicated that a copy of the decision should be sent to the relevant supervising court and prosecutor within forty-eight hours. However, the case file does not contain any document confirming that the decision in question was sent to the relevant supervising court and prosecutor.

23. At around 11 a.m. on 23 July 2014 the second applicant was arrested by plain-clothes police officers in Baku. According to a record dated 23 July 2014 relating to the inspection and seizure of physical evidence (*baxış keçirmək və maddi sübut götürmək barədə protokol*), the second applicant was arrested on the basis of information that he was involved in drug trafficking. He was taken to the OCD, where he was searched in the presence of two attesting witnesses and a State-appointed lawyer. During the search, drugs (heroin) were found on his person. According to the record, the second applicant admitted that drugs belonged to him.

24. On the same day criminal proceedings were instituted against the second applicant under Article 234.4.3 (illegal preparation, production, possession, storage, transportation and sale of a large quantity of drugs) of

the Criminal Code. The decision referred to the fact that following a search carried out on that day 3.918 grams of heroin had been found on him.

25. On 24 July 2014 the second applicant was charged with the criminal offence under Article 234.4.3 of the Criminal Code.

26. On the same day the Narimanov District Court ordered the second applicant's pre-trial detention for a period of three months. The court referred to the fact that 3.918 grams of heroin had been found on the second applicant and it justified the second applicant's detention pending trial by citing the gravity of the charges and the likelihood that if released he would abscond and obstruct the investigation.

27. On 30 July 2014 the second applicant appealed against that decision. He mainly argued that his arrest and detention had been unlawful since he had not been allowed to contact his family after his arrest on 24 July 2014, that the first-instance court had based its decision only on the prosecutor's request to apply the preventive measure of remand in custody without examining whether there was reasonable suspicion that he had committed a criminal offence and that the first-instance court had failed to justify his pre-trial detention.

28. On 1 August 2014 the Baku Court of Appeal dismissed the appeal, finding that the first-instance court's decision was justified.

29. On 10 October 2014 the Narimanov District Court dismissed the second applicant's application to be put under house arrest rather than being held in pre-trial detention, finding it unfounded.

30. On 17 October 2014 the Baku Court of Appeal upheld the first-instance court's decision.

31. On 21 October 2014 the Narimanov District Court extended the second applicant's pre-trial detention for a period of two months.

32. On 24 October 2014 the second applicant appealed against that decision. In particular, he pointed out that the first-instance court had based its decision solely on the prosecutor's request to extend his pre-trial detention without examining any further evidence and had failed to justify its extension order.

33. On 29 October 2014 the Baku Court of Appeal dismissed the second applicant's appeal. The appellate court essentially referred to the fact that 3.918 grams of heroin had been found on the second applicant following an operational information received that he had obtained drugs from an unknown source and had been involved in drug trafficking.

34. On 20 December 2014 the Narimanov District Court extended the second applicant's pre-trial detention for a further period of two months. The court justified its decision by the likelihood that if released he would abscond and obstruct the investigation.

35. On 29 December 2014 the Baku Court of Appeal upheld that decision.

36. No further decision concerning the extension of the second applicant's pre-trial detention is available in the case file.

37. On 6 May 2015 the Baku Court of Serious Crimes found the second applicant guilty under Article 234.4.3 of the Criminal Code and sentenced him to six years and six months' imprisonment.

III. APPLICATION NO. 76644/14

38. The third applicant is the brother of the second applicant.

39. On 17 July 2014 a police officer made a written report to the head of the Main Department on Combating Drug Trafficking of the Ministry of Internal Affairs ("the MDCDT") informing him of the alleged involvement of the third applicant in drug trafficking and asked him to authorise operational-search measures in that connection.

40. On the same date the head of the MDCDT took a decision relating to the carrying out of operational-search measures (*əməliyyat-axtarış tədbirlərinin həyata keçirilməsinə dair*), ordering the constitution of an operational group to identify and unmask (*müəyyən edilib ifşa olunması*) the third applicant. The decision also ordered an inspection on the person of the third applicant, as well as an inspection of his vehicle and home (*üzərinə, avtomobilinə və yaşadığı evinə baxış keçirilsin*). It referred to Article 10.4 of the Law of 28 October 1999 and Article 445.2 of the CCrP as the legal basis for the operational-search measure ordered, without giving any further explanation as to why it should be conducted without a prior judicial warrant. It also indicated that a copy of the decision should be sent to the relevant supervising court and prosecutor within forty-eight hours. However, the case file does not contain any document confirming that the decision in question was sent to the supervising court and prosecutor.

41. At around 2 p.m. on 17 July 2014, when the third applicant was at his workplace in Baku, he was arrested by plain-clothes police officers and was taken to the MDCDT. According to a record dated 17 July 2014 relating to the inspection and seizure of physical evidence (*baxış keçirmək və maddi sübut götürmək barədə protokol*), the third applicant was arrested on the basis of information that he was involved in drug trafficking. He was taken to the MDCDT, where 3.2 grams of a substance similar to heroin was found on him. According to the record, he said that the drugs found did not belong to him, but he could not explain where they had come from. It appears from the record that the investigator also carried out an inspection of the third applicant's vehicle, which was parked in the courtyard of the MDCDT, but did not find drugs or any other items relevant to the operational measures. The record was signed by two attesting witnesses and a State-appointed lawyer.

42. On the same day, criminal proceedings were instituted against the third applicant under Article 234.4.3 of the Criminal Code. The decision referred to the fact that following an inspection carried out on that day 3.185 grams of heroin had been found on him.

43. On 18 July 2014 the third applicant was charged with the criminal offence under Article 234.4.3 of the Criminal Code.

44. On the same day the Narimanov District Court ordered his detention for a period of three months. The court held that there was sufficient reasonable suspicion that the third applicant had committed the criminal acts attributed to him and referred in that regard to the fact that drugs had been found on him.

45. On 21 July 2014 the third applicant appealed against that decision, mainly arguing that he had not been allowed to contact his family after his arrest, that the first-instance court had based its decision only on the prosecutor's request for the preventive measure of remand in custody to be applied, without examining any evidence as to whether there was reasonable suspicion that he had committed a criminal offence, and that the court had failed to justify his pre-trial detention.

46. On 24 July 2014 the Baku Court of Appeal dismissed the appeal, finding that the first-instance court's decision had been justified.

47. On 9 October 2014 the Narimanov District Court dismissed the third applicant's application to be put under house arrest rather than being held in pre-trial detention, finding the application unfounded.

48. On 17 October 2014 the Baku Court of Appeal upheld the first-instance court's decision.

49. In the meantime, on 11 October 2014 the Narimanov District Court had extended the third applicant's pre-trial detention until 17 December 2014. The court justified its decision by citing the gravity of the charges and the likelihood that if released the third applicant would abscond and obstruct the investigation.

50. On 14 October 2014 the third applicant appealed against that decision, claiming that the first-instance court had failed to justify its extension order and had based its decision solely on the prosecutor's request for the extension of his pre-trial detention period without examining any further evidence.

51. On 17 October 2014 the Baku Court of Appeal dismissed the third applicant's appeal.

52. On 13 December 2014 the Narimanov District Court extended the third applicant's pre-trial detention for a further period of two months, namely until 17 February 2015. The court justified its decision by referring to the need for additional time to carry out further investigative actions.

53. On 18 December 2014 the Baku Court of Appeal upheld the first-instance court's decision.

54. No further decision concerning the extension of the third applicant's pre-trial detention is available in the case file.

55. On 16 March 2015 the Baku Court of Serious Crimes found the third applicant guilty under Article 234.4.3 of the Criminal Code and sentenced him to six years' imprisonment.

IV. APPLICATION NO. 7683/15

56. At the time of the events the fourth applicant was an active member of the Azerbaijan National Front Party. His brother was also an active member and the spokesperson of the same political party.

57. According to the fourth applicant, at around 4.30 p.m. on 11 August 2014, when he was travelling in the car of an acquaintance, J.A., in Sabirabad, their car was stopped by plain-clothes police officers who took him away in another car in the direction of the Sabirabad District Police Office. However, after driving for about 2-2.5 kilometres, they stopped the car in order to search him and following the search they declared that they had found drugs that the fourth applicant said they had planted.

58. According to a record dated 11 August 2014 relating to the carrying out of operational measure and seizure of physical evidence (*əməliyyat tədbirinin həyata keçirilməsi və maddi sübut götürülməsi barədə protokol*), the fourth applicant was arrested by the police at around 5.10 p.m. on 11 August 2014 at the entrance of the village of Khalafli in Sabirabad, on the basis of information received by the MDCDT that he was involved in drug trafficking. At the time of his arrest, 7.4 grams of substances similar to cannabis and 114.2 grams of substances similar to hashish were found on him. According to the record, he indicated that he would not reply to any question concerning the origin of the drugs found on him. The record was signed by two attesting witnesses and a State-appointed lawyer. The record referred to Articles 207.4 and 445.2 of the CCrP and Article 11.4.3 of the Law of 28 October 1999 as the legal basis for conducting the above-mentioned operational measures.

59. It appears from a record on inspection and seizure (*baxış və götürmə haqqında protokol*) available in the case file that on 11 August 2014 the MDCDT also found drugs during a search conducted at the fourth applicant's home in Sabirabad. The record did not refer to any legal provision as the legal basis for the conduct of the search and it does not appear from the documents in the case file that there was any judicial warrant for the search of the fourth applicant's home.

60. On 12 August 2014 criminal proceedings were instituted against the fourth applicant under Article 234.4.3 of the Criminal Code. The decision referred to the fact that during inspections of the fourth applicant and his home carried out on 11 August 2014, drugs had been found.

61. On 13 August 2014 the fourth applicant was charged with the criminal offence under Article 234.4.3 of the Criminal Code.

62. On the same day the Narimanov District Court ordered his detention for a period of three months. The court found that there was sufficient reasonable suspicion that he had committed the criminal acts attributed to him and cited the gravity of the charges and the risk of his absconding as grounds for his pre-trial detention.

63. On 19 August 2014 the fourth applicant appealed against that decision, mainly arguing that the first-instance court had failed to justify his pre-trial detention and that it had ignored the fact that his detention had been based on unlawfully obtained evidence which had been planted by the police.

64. On 25 August 2014 the Baku Court of Appeal dismissed the appeal, finding that the first-instance court's decision had been justified.

65. On 6 November 2014 the Narimanov District Court extended the fourth applicant's pre-trial detention until 11 January 2015. The court held that there was sufficient initial evidence to link the fourth applicant to the criminal acts attributed to him and relied on the gravity of the charges and the risk of absconding and obstruction to justify the extension of his pre-trial detention.

66. On 7 November 2014 the fourth applicant appealed against that decision, mainly reiterating his previous complaints.

67. On 13 November 2014 the Baku Court of Appeal dismissed the fourth applicant's appeal, finding that there were no grounds for quashing the extension order.

68. On 25 November 2014 the Narimanov District Court dismissed the fourth applicant's application to be put under house arrest rather than being held in pre-trial detention, finding the application unfounded.

69. On 4 December 2014 the Baku Court of Appeal upheld the first-instance court's decision.

70. No further decision concerning the extension of the fourth applicant's pre-trial detention is available in the case file.

71. On 14 May 2015 the Lankaran Court of Serious Crimes found the fourth applicant guilty under Article 234.4.3 of the Criminal Code and sentenced him to six years' imprisonment.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

72. The relevant provisions of the Code of Criminal Procedure ("the CCrP") concerning pre-trial detention are described in detail 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. The relevant decisions of the Plenum of the Supreme Court concerning pre-trial detention are described in detail in the Court's judgment in *Rasul Jafarov v. Azerbaijan* (no. 69981/14, §§ 79-80, 17 March 2016).

74. The relevant provisions of the CCrP concerning inspection, search and seizure and the relevant provisions of the Law on Operational-Search Activities of 28 October 1999 are described in detail in the Court's judgments in *Avaz Zeynalov v. Azerbaijan* (nos. 37816/12 and 25260/14, § 51, 22 April 2021) and *Azer Ahmadov v. Azerbaijan* (no. 3409/10, § 37 and §§ 43-50, 22 July 2021).

75. A number of relevant international documents are described in detail in the Court's judgments in *Rashad Hasanov and Others v. Azerbaijan* (nos. 48653/13 and 3 others, §§ 79-81, 7 June 2018), *Aliyev v. Azerbaijan* (nos. 68762/14 and 71200/14, §§ 79-80, 20 September 2018) and *Ibrahimov and Mammadov v. Azerbaijan* (nos. 63571/16 and 5 others, § 83, 13 February 2020).

THE LAW

I. JOINDER OF THE APPLICATIONS

76. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

77. Relying on Article 5 §§ 1 (c) and 3 of the Convention, the applicants complained that they had been arrested and detained in the absence of a "reasonable suspicion" that they had committed a criminal offence. They also complained that the domestic courts had failed to provide relevant and sufficient reasons justifying the need for their pre-trial detention. 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

78. The Court notes that these complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

79. The applicants maintained that the accusations against them had been groundless and that the prosecuting authorities had not been in possession of any objective evidence or information that could have given rise to a reasonable suspicion that they had committed a criminal offence. In particular, they submitted that there was no evidence proving any reasonable suspicion justifying their arrest and detention except drugs which had been planted on them after their arrest. The applicants also argued that when the domestic courts had ordered and subsequently extended their detention pending trial, they had failed to examine any evidence except for the prosecuting authorities' requests to order or extend their pre-trial detention.

80. Lastly, the applicants submitted that the domestic courts had failed to provide relevant and sufficient reasons justifying their pre-trial detention and had merely cited the relevant legal provisions without assessing their particular circumstances.

81. The Government contested the applicants' submissions, asserting that the applicants had been detained on reasonable suspicion of having committed drugs-related criminal offences under Article 234 of the Criminal Code. They noted that on various dates the police had received operational information about the applicants' involvement in the use and trafficking of drugs and had conducted operational measures in that connection. The applicants had been apprehended and searched in accordance with the provisions of domestic law and in the presence of attesting witnesses. The applicants' lawyers had not been present during the searches. However, according to the Government, the presence of a lawyer at the time of an arrest and search was required neither by the Court's case-law nor by the domestic legislation.

82. The Government furthermore submitted that the domestic courts had provided relevant and sufficient reasons justifying the need for the applicants' pre-trial detention.

2. The Court's assessment

83. The Court refers to the general principles established in its case-law and set out in *Selahattin Demirtaş v. Turkey (no. 2)* [GC] (no. 14305/17, §§ 311-21, 22 December 2020), which are equally pertinent to the present case.

84. The Court observes in the present case that while the applicants complained that there had been no reasonable suspicion against them throughout the entire period of their pre-trial detention, the Government submitted that the applicants had been detained on reasonable suspicion of having committed the drugs-related criminal offences under Article 234 of

the Criminal Code. In the Government's view, the existence of reasonable suspicion had been corroborated by evidence collected following the searches of the applicants carried out on the basis of operational information received that the applicants had been involved in drugs-related criminal offences.

85. The Court notes that, although the applicants were arrested and detained within the framework of separate criminal proceedings, the common feature of the present applications is the fact that the only items of evidence put forward by the prosecuting authorities and relied upon by the domestic courts in detaining the applicants and extending their detention were the drugs found on the applicants following their arrest by the police. In these circumstances, the Court considers that it should carefully scrutinise all the relevant circumstances surrounding the collection, use and examination of that evidence, including the investigative measures conducted for those purposes by the domestic authorities, in order to establish whether the evidence in question was sufficient to persuade an objective observer that the applicants might have committed the criminal offences imputed to them (compare *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, §§ 98-106, 7 June 2018, and *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, §§ 113-30, 13 February 2020).

86. In that connection, the Court considers it necessary to reiterate the fundamental importance of the guarantees contained in Article 5 of the Convention for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities. It is for that reason that the Court has repeatedly stressed in its case-law that any deprivation of liberty must not only have been effected in conformity with the substantive and procedural rules of national law but must equally be in keeping with the very purpose of Article 5, namely to protect the individual from arbitrariness. This insistence on the protection of the individual against any abuse of power is illustrated by the fact that Article 5 § 1 circumscribes the circumstances in which individuals may be lawfully deprived of their liberty, it being stressed that these circumstances must be given a narrow interpretation having regard to the fact that they constitute exceptions to a most basic guarantee of individual freedom (see *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 230, ECHR 2012).

87. The Court further reiterates that the object and purpose of the Convention, a treaty for the collective enforcement of human rights and fundamental freedoms, requires that its provisions be interpreted and applied in the light of its special character and so as to make its safeguards practical and effective (see *Yaşa v. Turkey*, 2 September 1998, § 64, *Reports of Judgments and Decisions* 1998-VI). As the Court has previously held, it must look behind appearances and investigate the realities of the situation complained of (see *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 163, 9 November 2010, and *Shenturk and Others v. Azerbaijan*, nos. 41326/17 and 3 others, § 101, 10 April 2022).

88. Turning to the circumstances of the present case, the Court considers it necessary to draw attention to various inconsistencies, elements that lack clarity and breaches of procedural rules in the collection, use and examination of the evidence put forward by the prosecuting authorities and relied upon by the domestic courts in detaining the applicants.

89. Firstly, the Court observes that neither the police reports nor any decisions taken subsequently contained any specific information or detail as regards the collection and receipt of the information which led the authorities to target the applicants specifically and constituted the grounds for arresting and searching them. In particular, it remains unknown how that information was allegedly received by the police, the source of the information and how that source became aware of the information. This situation is even more striking in the light of the fact that the applicants, who were political activists or had a close family member who was a political activist, had no criminal history of being involved in drugs-related or any other crimes whatsoever prior to the events in question.

90. Secondly, the Court notes that, although the searches of the applicants were conducted without a prior judicial warrant, the investigating authorities failed to justify their decisions by explaining the circumstances making it necessary to search the applicants without a prior judicial warrant and limited themselves to referring to the relevant provisions of the domestic law (compare *Kobiashvili v. Georgia*, no. 36416/06, § 61, 14 March 2019). It further does not appear from the documents available in the case file that there was any retrospective review of the investigating authorities' actions by a court, or that a copy of any relevant decisions concerning the conduct of the searches without a court order was sent to the relevant supervising court and prosecutor within forty-eight hours as required by domestic law (see reference in paragraph 74 above).

91. Thirdly, the Court refers to its findings in previous cases against Azerbaijan as regards the way the police carried out searches. It has previously held that the police's failure to conduct a search immediately following an arrest without good reason raises legitimate concerns about the possible "planting" of evidence (see *Layijov v. Azerbaijan*, no. 22062/07, § 69, 10 April 2014, and *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 53, 12 November 2015). The Court considers that these findings are relevant to the present case. The lapses of time between the arrests and the searches raise legitimate concerns about the possible "planting" of evidence, because the applicants were completely under the control of the police during that time. Moreover, there is nothing to suggest that there were any special circumstances rendering it impossible to carry out a search immediately after the applicants' arrest. The Court also does not consider that the presence of attesting witnesses during the searches in question could have remedied that situation in the light of the reports and findings of various international human rights organisations about a number of consistent accounts of police putting

drugs or other incriminating evidence into detained persons' personal belongings before calling in witnesses and conducting official searches and seizures (see *Ibrahimov and Mammadov*, cited above, § 127, and reference in paragraph 75 above).

92. Fourthly, the Court cannot overlook the fact that the investigative measures were mainly limited to conducting the relevant searches, without any further investigative steps being taken as regards the circumstances relating to the second, third and fourth applicants' alleged involvement in drug trafficking (see *Ibrahimov and Mammadov*, cited above, § 130). It does not appear from the documents in the case file that the domestic authorities attempted to search for other potential evidence – such as cash, information concerning possible suppliers or buyers, or items relating to drug paraphernalia, including scales and packaging material – at any stage of the investigation. They appear to have limited their searches exclusively to the seizure of the drugs. Nor can the Court overlook the fact that throughout the entire period of the applicants' detention the investigating authorities failed to establish or provide any information or documents as to the source from which they had allegedly obtained the drugs in question (compare *Rashad Hasanov and Others*, cited above, § 101).

93. Lastly, the Court notes that, when the domestic courts ordered and extended the applicants' detention pending trial, they accepted without any reservation the prosecuting authorities' requests to order and extend their pre-trial detention without duly examining the evidence to which the prosecuting authorities had referred in their requests (compare *Moldoveanu v. the Republic of Moldova*, no. 53660/15, §§ 54-56, 14 September 2021). In this connection, the Court also notes the decision of the Plenum of the Supreme Court of 3 November 2009 which required the domestic courts to subject prosecution authorities' applications for remand in custody to close 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 reference in paragraph 73 above). However, in the present case, the above directives were not taken into account and the domestic courts' decisions ordering and extending the applicants' pre-trial detention were silent as to the quality of the evidence obtained during the searches and the absence of any other evidence linking the applicants to the commission of drugs-related criminal offences (compare *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 97, 22 May 2014, and *Yagublu v. Azerbaijan*, no. 31709/13, § 61, 5 November 2015).

94. The Court is mindful of the fact that the applicants' cases went to trial and they were convicted. However, that does not affect its findings in connection with the present complaint, where it is called upon to examine whether the deprivation of the applicants' liberty was justified on the basis of the information or facts available at the relevant time. In this connection,

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 the 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 applicants were deprived of their liberty on "reasonable suspicion" of having committed a criminal offence.

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

96. Having regard to the above finding, the Court does not consider it necessary to examine separately under Article 5 § 3 of the Convention whether the domestic authorities provided relevant and sufficient reasons justifying the need for the applicants' continued pre-trial detention (see *Lukanov v. Bulgaria*, 20 March 1997, § 45, *Reports* 1997-II; *Ilgar Mammadov*, cited above, § 102; and *Yagublu*, cited above, § 64).

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

97. The applicants complained that the judicial review of the lawfulness of their detention had been inadequate since the domestic courts had failed to address their specific arguments in support of their release. Article 5 § 4 of the Convention 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

98. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

99. The applicants reiterated their complaint and maintained that the courts had failed to consider any of the arguments against their detention that they had repeatedly raised before them.

100. The Government submitted that the applicants and their lawyers had been heard by the domestic courts and had been able to put questions to the prosecuting authority during the court hearings. Nothing in the case file indicated that the proceedings had not been adversarial or had been otherwise unfair. The material in the case file, including records of court hearings,

showed that the judges had heard the applicants' arguments and had taken the decisions they considered to be the most appropriate in the circumstances.

2. The Court's assessment

101. The Court refers to the general principles established in its case-law as set out in the judgments of *Rasul Jafarov v. Azerbaijan* (no. 69981/14, §§ 140-42, 17 March 2016) and *Mammadli v. Azerbaijan* (no. 47145/14, §§ 72-74, 19 April 2018), which are equally pertinent in the present case.

102. Turning to the circumstances of the present case, the Court notes that the domestic courts examining the applicants' appeals against their detention consistently failed to verify the reasonableness of the suspicion underpinning the applicants' detention (see paragraph 93 above). In their decisions, using short, vague and stereotyped formulae for rejecting the applicants' complaints as unsubstantiated, the domestic courts limited their role to one of mere automatic endorsement of the detention decisions, and they cannot be considered to have conducted a genuine review of the "lawfulness" of the applicants' detention (see *Mirgadirov v. Azerbaijan and Turkey*, no. 62775/14, § 99, 17 September 2020). That is contrary not only to the requirements of Article 5 § 4, but also to those of domestic law as interpreted and clarified by the Plenum of the Supreme Court (see reference in paragraph 73 above).

103. The foregoing considerations are sufficient to enable the Court to conclude that the applicants were not afforded a proper judicial review of the lawfulness of their detention. Accordingly, there has been a violation of Article 5 § 4 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 5 OF THE CONVENTION

104. On the basis of the same facts and in response to a question posed by the Court in relation to Article 18 of the Convention in conjunction with Article 5 of the Convention, the applicants argued in their observations that their Convention rights had been restricted for purposes other than those prescribed in the Convention. Article 18 provides:

> "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."

105. The Government submitted that the applicants had failed to exhaust domestic remedies in respect of the complaint under Article 18 of the Convention.

106. The applicants did not make any submission as regards the exhaustion of domestic remedies.

107. The Court observes that the applicants did not raise, either expressly or in substance, any complaint under Article 18 of the Convention before the domestic courts which ordered and extended their pre-trial detention. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies (see *Rustamzade v. Azerbaijan*, no. 38239/16, § 58, 7 March 2019).

V. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

108. The first applicant complained under Article 5 § 1 of the Convention that his detention from 8.30 p.m. on 5 February 2011 to 2.45 a.m. on 6 February 2011 had been unlawful and that there had been a hindrance to the exercise of his right of individual petition under Article 34 of the Convention. Relying on Article 6 § 2 of the Convention, the fourth applicant complained that the statement made in the Narimanov District Court's decision of 6 November 2014 had infringed his right to the presumption of innocence and that there had been a hindrance to the exercise of his right of individual petition under Article 34 of the Convention.

109. Having regard to the conclusions reached above under Article 5 §§ 1 and 4 of the Convention (see paragraphs 95 and 103 above) and the parties' submissions, the Court considers that there is no need to give a separate ruling on the admissibility and merits of these complaints in the present case (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

110. 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

111. The second and third applicants jointly claimed 5,500 euros (EUR) in respect of pecuniary damage, arguing that their family had spent that sum on sending food and regularly visiting them in prison.

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

113. Even assuming a causal link between the pecuniary damage alleged and the violations found, the Court notes that the second and third applicants did not submit relevant documentary evidence supporting their claim (see *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, § 85,

18 February 2021). Accordingly, it rejects the second and third applicants' claim in respect of pecuniary damage.

2. Non-pecuniary damage

114. The first applicant claimed EUR 20,000 in respect of non-pecuniary damage. The second, third and fourth applicants each claimed EUR 50,000 in respect of non-pecuniary damage.

115. The Government submitted that the amounts claimed by the applicants were unsubstantiated and excessive, and that the finding of a violation would constitute sufficient reparation.

116. 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 each applicant the sum of EUR 10,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

117. The first applicant claimed EUR 2,000, the second and third applicants each claimed EUR 5,000, and the fourth applicant claimed 5,300 Azerbaijani manats (which at the material time was equivalent to approximately EUR 5,100) for legal services incurred in the proceedings before the domestic courts and the Court. The second, third and fourth applicants submitted the contracts concluded with their representatives in support of their claims. The first applicant submitted that he was not able to submit a copy of the contract concluded with his representative, Mr Intigam Aliyev, since the contract had been taken by the investigating authorities during the search carried out in Mr Aliyev's office in August 2014. The first, second and third applicants also asked that the compensation in respect of costs and expenses be paid directly into their representatives' bank accounts.

118. The Government submitted that the amounts claimed by the applicants were unsubstantiated and excessive in view of the work done by the applicants' representatives. They asked the Court to take into consideration the fact that the second and third applicants were represented before the Court by the same lawyer. The Government also contested the first applicant's submissions that the contract in question had been taken during the search carried out in Mr Aliyev's office in August 2014. The Government further noted that Mr Aliyev had not represented the first applicant in the domestic proceedings and that the first applicant had already been granted legal aid in the proceedings before the Court.

119. 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. As regards the first applicant's claim, the Court agrees with the Government's submissions that Mr Aliyev did not in fact represent the first applicant in the domestic proceedings, and the first applicant has not provided the Court with any other contract concerning his representation in the domestic proceedings by another lawyer. As regards the first applicant's representation in the proceedings before the Court, the Court observes that, even assuming that a copy of his contract with Mr Aliyev which was in his representative's possession was taken by the investigating authorities, it is not clear from the first applicant's submissions why he was unable to submit a copy of his contract with Mr Aliyev which should have been in his own possession or other relevant document. In these circumstances, regard being had to the documents in its possession and the fact that the first applicant has already been granted legal aid, the Court dismisses the first applicant's claim for costs and expenses.

120. As to the second, third and fourth applicants' claims for legal services incurred in the proceedings before the domestic courts and the Court, the Court notes that in the present case the second and third applicants were represented by the same lawyer and that substantial parts of their submissions in relation to their applications were similar. Having regard to this fact, as well as to the documents in its possession and the amount of work carried out by the representatives, the Court considers it reasonable to award the sum of EUR 3,000 jointly to the second and third applicants and the sum of EUR 2,000 to the fourth applicant, covering costs under all heads, plus any tax that may be chargeable to the second, third and fourth applicants. The Court also specifies that the amount awarded in respect of the second and third applicants is to be paid directly into the bank account of their representative.

C. Default interest

121. 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. *Decides* to join the applications;

2. *Declares* the complaints under Article 5 § 1 (alleged lack of reasonable suspicion that the applicants committed a criminal offence), Article 5 § 3 (alleged lack of justification for the applicants' pre-trial detention) and Article 5 § 4 (alleged lack of a proper judicial review of the lawfulness of the applicants' detention) of the Convention admissible;

3. *Declares* the applicants' complaint under Article 18 of the Convention taken in conjunction with Article 5 of the Convention inadmissible;

4. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

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

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

7. *Holds* that there is no need to examine separately the admissibility and merits of the remaining complaints;

8. *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 10,000 (ten thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three thousand euros) jointly to the second and third applicants, plus any tax that may be chargeable to them, in respect of costs and expenses, to be paid directly into their representative's bank account;
      (iii) EUR 2,000 (two thousand euros) to the fourth applicant, plus any tax that may be chargeable to him, 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 15 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President

APPENDIX

No.	Application no.	Lodged on	Applicant Year of birth Place of residence	Represented by
1.	54151/11	23/08/2011	**Jabbar Novruz oglu SAVALANLI** **1991** **Sumgayit**	Intigam ALIYEV Asabali MUSTAFAYEV Anar GASIMOV
2.	76631/14	05/12/2014	**Faraj Ragif oglu KARIMOV** **1985** **Baku**	Nemat KARIMLI
3.	76644/14	05/12/2014	**Siraj Ragif oglu KARIMLI** **1984** **Baku**	Nemat KARIMLI
4.	7683/15	27/01/2015	**Murad Gulahmad oglu ADILOV** **1983** **Baku**	Yalchin IMANOV