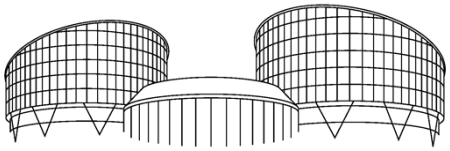

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SARDAR BABAYEV v. AZERBAIJAN

(Applications nos. 34015/17 and 26896/18)

JUDGMENT

Art 9 • Freedom of religion • Manifest religion or belief • Worship • Teaching • Criminal conviction of a local clergyman for preaching and conducting Friday prayers solely based on blanket ban on the conduct of Islamic religious rites and rituals by Azerbaijani citizens who obtained their religious education abroad • Interference not shown to pursue any "pressing social need" and thus not "necessary in a democratic society"
Art 3 (substantive) • Degrading treatment • Applicant's confinement in a metal cage during pre-trial detention appeal hearing
Art 5 § 3 • Reasonableness of pre-trial detention • Domestic courts' failure to provide "relevant" and "sufficient" reasons justifying applicant's pre-trial detention

Prepared by the Registry. Does not bind the Court.

STRASBOURG

1 February 2024

FINAL

01/05/2024

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

In the case of Sardar Babayev v. Azerbaijan,

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

Marko Bošnjak*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Ivana Jelić,
Gilberto Felici*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the applications (nos. 34015/17 and 26896/18) 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 Sardar Akif oglu Babayev (*Sərdar Akif oğlu Babayev* – "the applicant"), on 2 May 2017 and 19 May 2018, respectively;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Articles 3 and 5, Article 6 § 2, and Articles 9, 10, 11 and 14 of the Convention and to declare the remainder of the applications inadmissible;

the parties' observations;

Having deliberated in private on 9 January 2024,

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

INTRODUCTION

1. The present two applications concern the pre-trial detention and subsequent criminal conviction of the applicant, a local clergyman who obtained his religious education abroad, for preaching and conducting Friday prayers in a mosque.

THE FACTS

2. The applicant was born in 1974 and at the time of the events lived in Masalli. He was represented by Mr J. Javadov, a lawyer based in Azerbaijan.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. BACKGROUND INFORMATION

5. The applicant obtained his religious education in Iran between 1991 and 2000. In 2000 he returned to Azerbaijan, where he was involved in

religious activities. According to the applicant, he had been preaching and conducting Friday prayers in the Masalli city mosque since 2009.

6. By a law of 4 December 2015, a new Article 168-1 was added to the Criminal Code which criminalised the conduct of Islamic religious rites and rituals by citizens of the Republic of Azerbaijan who had obtained their religious education abroad (see paragraph 31 below).

7. In October 2016 the Masalli city mosque was closed for works, but its religious community continued to hold religious ceremonies within the precincts of the mosque, in the courtyard designated for mourning ceremonies, and the applicant continued to conduct Friday prayers there.

II. INSTITUTION OF CRIMINAL PROCEEDINGS AGAINST THE APPLICANT AND HIS REMAND IN CUSTODY

8. By a letter of 8 November 2016, the Head of the Masalli District Executive Authority informed the local branch of the State Security Service that on 4 November 2016 the applicant had conducted Friday prayers within the precincts of the Masalli mosque, in the area designated for mourning ceremonies, in breach of Article 168-1.1 of the Criminal Code.

9. It appears from the documents in the case file that on 30 December 2016 criminal proceedings were instituted by the Masalli District Police Office in connection with the above-mentioned incident and that the applicant was questioned on three occasions as a witness.

10. On 22 February 2017 the applicant was charged under Article 168-1.3.1 of the Criminal Code. He was, in particular, accused of preaching and conducting Friday prayers within the precincts of the Masalli Juma mosque in the area designated for mourning ceremonies on 4 and 18 November 2016.

11. On the same day the Masalli District Court, referring to the official charge brought against the applicant and a request by the prosecutor to apply the preventive measure of remand in custody, ordered the applicant's pre-trial detention for a period of one month and seven days, citing the gravity of the charge and the likelihood that if released, he would abscond and obstruct the investigation.

12. On 24 February 2017 the applicant appealed, arguing that there was no justification for his pre-trial detention.

13. On 16 March 2017 the Shirvan Court of Appeal dismissed the appeal, reiterating the reasons given by the lower court. According to the applicant, during the court hearing he was confined in a metal cage in the courtroom. In support of his allegation, he provided a photograph of his confinement in the cage.

III. NEWS ITEM PUBLISHED BY A PRIVATE NEWS AGENCY

14. On 23 February 2017 a news item entitled "An individual conducting unlawful religious activity was detained in Masalli" was published on the website of a private news agency. The news item indicated that the Deputy Head of the State Committee for Work with Religious Associations (*Dini Qurumlarla İş Üzrə Dövlət Komitəsi* – hereinafter "the Committee"), namely S.H., had exclusively (*özəl olaraq*) informed that news agency of it. The news item further indicated that, according to S.H., criminal proceedings had been instituted against Sardar Babayev (the applicant) under Article 168-1.3.1 of the Criminal Code and that on numerous occasions the applicant had conducted religious rites in Masalli city mosque, in breach of the law, and had continued his unlawful activity despite repeated warnings.

IV. EXTENSION OF THE APPLICANT'S PRE-TRIAL DETENTION

15. Following a request by the prosecutor, on 27 March 2017 the Masalli District Court extended the applicant's pre-trial detention by one month, until 30 April 2017. The court justified its decision by the gravity of the charges, the possibility of his absconding, obstructing and reoffending, and the need for additional time to carry out further investigative actions.

16. On 30 March 2017 the applicant appealed against that decision, arguing that the first-instance court had failed to justify his continued detention. He asserted that there was no risk of his absconding or obstructing the investigation and that the first-instance court had failed to take into consideration his personal situation.

17. On 6 April 2017 the Shirvan Court of Appeal dismissed the appeal, finding that the extension of the applicant's pre-trial detention had been justified.

18. On 19 April 2017 the Masalli District Court extended the applicant's pre-trial detention until 20 May 2017. The court substantiated the necessity of this extension on the grounds that a number of investigative steps needed to be carried out, as well as the gravity of the charges, and the possibility of his absconding and obstructing the investigation.

19. On 24 April 2017 the applicant appealed against that decision, reiterating his previous complaints.

20. On 4 May 2017 the Shirvan Court of Appeal dismissed the appeal, finding that the extension of the applicant's detention pending trial had been justified.

V. THE APPLICANT'S TRIAL AND CRIMINAL CONVICTION

21. On 11 May 2017 the prosecutor in charge of the case issued a bill of indictment and filed it with the Masalli District Court.

22. On 19 May 2017 the Masalli District Court held a preliminary hearing at which it decided, *inter alia*, that the preventive measure of remand in custody in respect of the applicant should remain unchanged.

23. On 3 July 2017 the Masalli District Court found the applicant guilty under Article 168-1.3.1 of the Criminal Code and sentenced him to three years' imprisonment. Relying on various witness statements and a video-recording dated 9 December 2016, the court found that the applicant had committed the criminal offence provided for by Article 168-1.3.1 of the Criminal Code because, although he had obtained his religious education in Iran, he had preached and conducted Friday prayers within the precincts of the Masalli Juma mosque in the area designated for mourning ceremonies on 4 and 18 November 2016, as well as on 9 December 2016.

24. On 23 July 2017 the applicant appealed against that judgment, claiming in particular that there had been a breach of his right to freedom of religion as protected under Article 9 of the Convention.

25. On 25 September 2017 the Shirvan Court of Appeal dismissed the applicant's appeal. The appellate court made no mention of the applicant's particular complaint under Article 9 of the Convention.

26. On 13 February 2018 the Supreme Court upheld the applicant's conviction.

RELEVANT LEGAL FRAMEWORK

I. THE CONSTITUTION OF THE REPUBLIC OF AZERBAIJAN

27. At the material time, the relevant provisions of the Constitution provided as follows:

Article 7 – Azerbaijani State

"I. The Azerbaijani State is a democratic, secular, unitary republic governed by the rule of law. ..."

Article 18 – Religion and State

"I. Religion is separated from the State in the Republic of Azerbaijan. All religious faiths shall be equal before the law. ..."

Article 48 – Freedom of conscience

"I. Everyone shall enjoy freedom of conscience.

II. Everyone shall have the right to freely determine his or her attitude to religion, to profess, individually or together with others, any religion, or to profess no religion, and to express and disseminate his or her beliefs concerning his or her attitude to religion.

III. [People] shall be free to hold religious ceremonies, provided that [those ceremonies] do not violate public order or public morals. ..."

II. THE LAW ON FREEDOM OF RELIGIOUS BELIEF OF 20 AUGUST 1992

28. By a law of 30 June 2009, a new third paragraph was added to Article 21 of the Law on freedom of religious belief which read as follows:

> "The conduct of Islamic religious rites and rituals may be carried out only by citizens of the Republic of Azerbaijan who studied in the Republic of Azerbaijan."

29. By a law of 4 December 2015, the third paragraph of Article 21 was amended as follows:

> "The conduct of Islamic religious rites and rituals may be carried out only by citizens of the Republic of Azerbaijan. Citizens of the Republic of Azerbaijan who obtained a religious education abroad are forbidden to conduct Islamic religious rites and rituals."

30. By a law of 16 May 2017, the second sentence of the third paragraph of Article 21 was amended as follows:

> "Citizens of the Republic of Azerbaijan who obtained a religious education abroad may be allowed to conduct Islamic religious rites and rituals by the Caucasus Muslims Board (*Qafqaz Müsəlmanları İdarəsi* [the official governing body of Muslim religious organisations in Azerbaijan]), in agreement with the relevant executive authority."

III. CRIMINAL CODE

31. By a law of 4 December 2015, a new Article 168-1 was added to the Criminal Code which provided at the material time as follows:

> **Breach of the requirements for conducting religious propaganda, rites and rituals**
>
> "168-1.1. The conduct of Islamic religious rites and rituals by a citizen of the Republic of Azerbaijan who obtained his or her religious education abroad shall be punishable by a fine in the amount of between 2,000 and 5,000 manats, or deprivation of liberty for a period of up to one year.
>
> 168-1.2. The conduct of religious propaganda by a foreigner or a stateless person shall be punishable by deprivation of liberty for a period of between one and two years.
>
> 168-1.3. The actions referred to in Articles 168-1.1 and 168-1.2 of this Code, if committed:
>
> 168-1.3.1. repeatedly
>
> 168-1.3.2. by a group of individuals by prior arrangement or by an organised group
>
> shall be punishable by deprivation of liberty for a period of between two and five years."

32. By a law of 6 March 2018, the first paragraph of Article 168-1.1 was amended as follows:

> "The conduct of Islamic religious rites and rituals by a citizen of the Republic of Azerbaijan who obtained his or her religious education abroad, without the consent of the relevant executive authority as provided for by the Law on freedom of religious belief of the Republic of Azerbaijan shall be punishable by a fine in the amount of

between 2,000 and 5,000 manats, or deprivation of liberty for a period of up to one year."

IV. RELEVANT INTERNATIONAL DOCUMENT

33. The relevant extracts from the Joint Opinion (opinion no. 681/2012; CDL-AD (2012)022) on the Law on freedom of religious belief of the Republic of Azerbaijan by the European Commission for Democracy through Law (Venice Commission) and the OSCE/ODIHR adopted by the Venice Commission at its 92nd Plenary Session (12-13 October 2012), read (footnotes omitted):

Article 21. Religious rites and rituals

"100. According to Article 21, paragraph 3, of the Law, 'Islamic religious rites and rituals may be carried out only by citizens of the Republic of Azerbaijan [who?] studied in the Republic of Azerbaijan.' This provision would also appear to be discriminatory and should be deleted, as under international law, freedom of religion cannot be restricted on grounds such as nationality or place of study. The above requirement is unnecessarily strict and in conflict not only with the premise of the law that state and religion are separate but also with the freedom to manifest his religion in 'worship, teaching, practice and observance', as stated in Article 9 (1) of the [Convention]."

THE LAW

I. JOINDER OF THE APPLICATIONS

34. 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 3 OF THE CONVENTION

35. Relying on Article 3 of the Convention, the applicant complained that his confinement in a metal cage in the courtroom during the appeal hearing on 16 March 2017 had violated his human dignity and amounted to degrading treatment. Article 3 reads as follows:

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

1. The parties' submissions

36. The Government submitted that the applicant had not exhausted domestic remedies in respect of his complaint. In particular, they asserted that the applicant had failed to bring this issue to the attention of the court which had heard the case, to ask it to take him out of the metal cage or to lodge a complaint seeking compensation for the alleged violation of his right.

37. The applicant disagreed with the Government's submissions, arguing that confinement in a metal cage was standard practice and that the Government's objection of non-exhaustion of domestic remedies was unsubstantiated.

2. The Court's assessment

38. The Court notes that it has previously dismissed arguments by the Government that applicants had not exhausted domestic remedies in that they had failed to bring this issue to the attention of the court hearing the case (see *Natig Jafarov v. Azerbaijan*, no. 64581/16, § 33, 7 November 2019) and does not see any reason to depart from that finding in the instant case. As regards the Government's argument that the applicant had not complied with the rule on exhaustion of domestic remedies because he had not lodged a complaint seeking compensation, the Court observes that the Government did not specify with sufficient clarity the type of action which would have been an effective remedy in their view, nor did they provide any further information as to how such action could have prevented the alleged violation or its continuation or provided the applicant with adequate redress (ibid., § 33). Moreover, the Government did not submit a single example of a domestic decision in which such a course of action had been successful (compare *Emin Huseynov v. Azerbaijan (no. 2)*, no. 1/16, § 43, 13 July 2023). The Court therefore considers that the Government's objections concerning the non-exhaustion of domestic remedies should be dismissed.

39. 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

40. The applicant maintained his complaint.

41. The Government submitted that the conditions of the applicant's confinement in the courtroom were compatible with Article 3 of the Convention and had not caused him a degree of suffering or distress amounting to a violation of that Article.

2. The Court's assessment

42. The Court notes that in *Natig Jafarov* (cited above, §§ 37-41), having examined an identical complaint based on similar facts, it found that the applicant's confinement in a metal cage during the appeal hearing concerning his pre-trial detention had amounted to degrading treatment. The Court considers that the analysis and finding it made in *Natig Jafarov* also apply to the present case and sees no reason to deviate from that finding.

43. There has therefore been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

44. The applicant complained under Article 5 § 3 of the Convention that the domestic courts had failed to justify the need for his pre-trial detention and to provide reasons for his continued detention. Article 5 § 3 of the Convention reads as follows:

> "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

45. 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

46. The applicant maintained his complaint.

47. The Government submitted that the domestic courts had given sufficient and relevant reasons for the applicant's pre-trial detention. They had taken account of the fact that the applicant had a long-lasting and established connection with Iran and had expressed his wish to travel there.

2. The Court's assessment

48. The Court refers to the general principles established in its case-law and set out in *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 84-91, 5 July 2016), which are equally pertinent to the present case.

49. As regards the period to be taken into consideration for the purposes of Article 5 § 3, the Court notes that this period commenced on 22 February 2017, when the applicant was arrested, and ended on 3 July 2017, when the Masalli District Court convicted him. Thus, the applicant was held in pre-trial detention for four months and eleven days in total.

50. The Court observes that the domestic courts, in their decisions on the applicant's detention, used a standard template and limited themselves to repeating a number of grounds for detention in an abstract and stereotyped way, without giving any reasons why they considered those grounds relevant to the applicant's case. They also failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons. The Court has repeatedly found violations of Article 5 § 3 in previous

Azerbaijani cases where similar shortcomings were noted and analysed in detail (see, among others, *Farhad Aliyev v. Azerbaijan*, no. 37138/06, §§ 191-94, 9 November 2010; *Muradverdiyev v. Azerbaijan*, no. 16966/06, §§ 87-91, 9 December 2010; and *Zayidov v. Azerbaijan*, no. 11948/08, §§ 64-68, 20 February 2014). The Court also cannot accept the Government's submissions that the domestic courts had taken account of the fact that the applicant had a long-lasting and established connection with Iran and had expressed his wish to travel there, since the domestic courts' decisions did not refer to any such considerations in their reasoning, nor did they provide any explanation or information in that connection (see *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, § 58, 18 February 2021).

51. In view of the foregoing considerations, the Court finds that the legal issue raised in the present case under Article 5 § 3 of the Convention is of a repetitive nature and it does not see any fact or argument capable of persuading it to reach a different conclusion. Therefore, the Court considers that the authorities failed to give "relevant" and "sufficient" reasons to justify the need for the applicant's pre-trial detention.

52. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

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

53. The applicant complained under Article 5 § 4 of the Convention that the judicial review of his pre-trial detention had been inadequate.

54. Having regard to the facts of the case, the submissions of the parties, and its findings above (see paragraphs 48-52 above), the Court considers that there is no need to examine the admissibility and merits of this complaint (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

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

55. The applicant further complained under Article 6 § 2 of the Convention that the statement made by S.H. had amounted to an infringement of his right to the presumption of innocence. Article 6 § 2 of the Convention reads as follows:

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

56. The Government contested the applicant's argument. In particular, they submitted that there was no proof that S.H. had made the statement published by the private news agency (see paragraph 14 above). They further submitted that no violation of Article 6 § 2 of the Convention could be inferred from the news item in question, in which the author had simply described the events of the day on which the offence had occurred and the

applicant's background. Lastly, according to the Government, S.H. – who had allegedly made the statement – had not occupied any official position which might influence the proceedings against the applicant.

57. The applicant maintained his complaint, submitting that the impugned statement made by the Deputy Head of the Committee had amounted to a declaration of his guilt. The applicant also noted that S.H. had not denied or corrected the statement made on his behalf in the press. Thus, it could be concluded that S.H. agreed with the content of the statement.

58. The Court reiterates that Article 6 § 2 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 v. France*, 10 February 1995, § 35, Series A no. 308, and *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 125, 22 May 2014). 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 or actions 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; *Daktaras v. Lithuania*, no. 42095/98, §§ 41-43, ECHR 2000-X; and *Ürfi Çetinkaya v. Turkey*, no. 19866/04, § 139, 23 July 2013).

59. Turning to the facts of the present case, the Court observes that only one day after the applicant's arrest, on 23 February 2017, a private news agency published a news item which attributed the statement in question to S.H., who was at the relevant time the Deputy Head of the Committee. However, the parties are in dispute as to the question whether the statement attributed to S.H. was genuinely made by him.

60. The Court notes at the outset that the State may be held responsible in the context of Article 6 § 2 of the Convention for the actions of private media outlets only in specific circumstances (see *Y.B. and Others v. Turkey*, nos. 48173/99 and 48319/99, §§ 48-50, 28 October 2004, compare also *Huseynov v. Azerbaijan* [Committee], no. 3899/08, §§ 42-43, 18 January 2018). The responsibility of the State for publication of statements by private media outlets arises only in so far as the statements at issue can be attributed to the State (see *Mityanin and Leonov v. Russia*, nos. 11436/06 and 22912/06, § 102, 7 May 2019). In the present case, although the applicant maintained that the impugned statement had been made by S.H., he failed to submit any evidence in support of his allegation. In that connection, the Court cannot accept the applicant's argument that the statement should be attributed to S.H. because the latter had not denied or corrected the statement made on his behalf in the press. The Court also observes that the contents of the news

items were not such that they could have been obtained only from the domestic authorities (compare *Huseynov*, cited above, § 42). Furthermore, the Court does not lose sight of the fact that the applicant failed to take any action against the private news agency before the domestic authorities in order to clarify whether the statement had indeed been made by S.H. or not.

61. In these circumstances, the Court is unable to establish that the statement published by the private news agency on 23 February 2017 is attributable to the respondent State. 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.

VI. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

62. Relying on Articles 9, 10, 11 and 14 of the Convention, the applicant complained that his criminal conviction for preaching and conducting Friday prayers in a mosque had amounted to a violation of his rights protected by the Convention. Having regard to the circumstances of the case, the Court considers that the applicant's complaint does not raise a separate issue under Articles 10, 11 and 14 of the Convention and falls to be examined solely under Article 9 of the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018). Article 9 reads as follows:

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

63. 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

64. The applicant maintained his complaint, submitting that his criminal conviction for preaching and conducting Friday prayers in a mosque had amounted to an unjustified interference with his right to manifest his religion.

He argued that the interference in question had not been prescribed by law and had not been necessary in a democratic society.

65. The Government agreed that the applicant's criminal conviction had constituted an interference with his right to manifest his religion. That interference had been prescribed by Article 168-1.3.1 of the Criminal Code and had pursued the legitimate aim of the protection of public order and the preservation of the conditions of "living together" as an element of "the protection of the rights and freedoms of others". The aim of the legal provision in question was to prevent negative influences of foreign religious extremist and fundamentalist ideologies not recognising and threatening the rule of law, secularism, pluralism and the constitutionalism of democratic States and to protect the public from the negative consequences of the dissemination of such ideologies among the population.

66. Relying on the Court's case-law indicating the incompatibility of Sharia with democratic values and having regard to the wide margin of appreciation afforded to the State in this context, the Government submitted that in the present case the ban imposed by the law could be regarded as proportionate to the aim pursued.

2. The Court's assessment

(a) Whether there was an interference

67. The Court notes that it is undisputed by the parties that there was an interference with the applicant's right to freedom of religion on account of his criminal conviction for preaching and conducting Friday prayers in a mosque. The Court shares this view (compare *Serif v. Greece*, no. 38178/97, § 39, ECHR 1999-IX, and *Perry v. Latvia*, no. 30273/03, § 56, 8 November 2007).

(b) Whether the interference was justified

68. Such interference will breach the Convention if it fails to satisfy the criteria set out in the second paragraph of Article 9. The Court must therefore ascertain whether the interference was "prescribed by law", pursued one or more of the legitimate aims listed in that paragraph, and was "necessary in a democratic society" in order to achieve that aim or aims.

(i) Prescribed by law

69. The Court observes that the applicant's criminal conviction was based on Article 168-1.3.1 of the Criminal Code, which at the relevant time criminalised the conduct of Islamic religious rites and rituals by a citizen of the Republic of Azerbaijan who had obtained his religious education abroad. This law was accessible and foreseeable and, therefore, the interference with his right to freedom of religion was "prescribed by law" within the meaning of Article 9 § 2 of the Convention.

(ii) Legitimate aim

70. The Court observes that the Government submitted that the interference had pursued the legitimate aims of "the protection of public order" and the preservation of the conditions of "living together" as an element of "the protection of the rights and freedoms of others". The Court will proceed on the assumption that the interference pursued the legitimate aim of the protection of public order (see *Serif*, cited above, § 45, and *Masaev v. Moldova*, no. 6303/05, § 25, 12 May 2009).

(iii) Necessary in a democratic society

(α) General principles

71. The Court reiterates that, as enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a "democratic society" within the meaning of the Convention. This freedom is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it. That freedom entails, *inter alia*, freedom to hold or not to hold religious beliefs and to practise or not to practise a religion (see, among other authorities, *Kokkinakis v. Greece*, 25 May 1993, § 31, Series A no. 260-A; *Buscarini and Others v. San Marino* [GC], no. 24645/94, § 34, ECHR 1999-I; *S.A.S. v. France* [GC], no. 43835/11, § 124, ECHR 2014 (extracts); and *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 103, 26 April 2016).

72. Religious freedom is primarily a matter of individual thought and conscience. This aspect of the right set out in the first paragraph of Article 9, to hold any religious belief and to change religion or belief, is absolute and unqualified. However, as further set out in Article 9 § 1, freedom of religion also encompasses the freedom to manifest one's belief alone and in private, but also to practise in community with others and in public. The manifestation of religious belief may take various forms, namely worship, teaching, practice and observance (see *Kokkinakis*, cited above, § 31, and *Leyla Şahin v. Turkey* [GC], no. 44774/98, § 105, ECHR 2005-XI).

73. Under the terms of Article 9 § 2 of the Convention, any interference with the right to freedom of religion must be "necessary in a democratic society". An instance of interference will be considered "necessary in a democratic society" for a legitimate aim if it answers a "pressing social need" and in particular if it is proportionate to the legitimate aim pursued and if the reasons adduced by the national authorities to justify it are "relevant and sufficient" (see *İzzettin Doğan and Others*, cited above, § 105).

74. According to its settled case-law, the Court leaves to States Parties to the Convention a certain margin of appreciation in deciding whether and to

what extent an interference is necessary, but that goes hand in hand with European supervision of both the relevant legislation and the decisions applying it. The Court's task is to ascertain whether the measures taken at national level are justified in principle and proportionate (see *Masaev*, cited above, § 24).

(β) Application of those principles to the present case

75. The Court observes that the applicant was convicted under Article 168-1.3.1 of the Criminal Code, which at the relevant time provided for criminal penalties for breaches of the blanket ban – laid down in the Law on freedom of religious belief of 20 August 1992 – on the conduct of Islamic religious rites and rituals by a citizen of the Republic of Azerbaijan who had obtained his religious education abroad (see paragraphs 29 and 31 above). The Court notes that there is no indication whatsoever that the Islamic religious rites and rituals that the applicant conducted contained any expressions or constituted any actions, such as, for example, seeking to spread, incite or justify hatred, discrimination or intolerance, or otherwise undermine the ideals and values of a democratic society. He was thus punished solely for failing to comply with new legal requirements introduced in December 2015 that were applicable to citizens of the Republic of Azerbaijan who had obtained their religious education abroad.

76. The Government explained the rationale behind the criminalisation of the conduct of Islamic religious rites and rituals by a citizen of the Republic of Azerbaijan who had obtained his religious education abroad by the fight against religious extremism and the protection of democratic values (see paragraphs 65-66 above). The Court is aware of the fundamental importance of secularism in Azerbaijani statehood and the respondent State's attachment to religious tolerance. However, it cannot accept the Government's argument that the applicant's criminal conviction was necessary in a democratic society on account of the State's fight against religious extremism and its protection of democratic values.

77. In that connection, the Court notes at the outset that it shares the concerns expressed in Joint Opinion no. 681/2012 of the Venice Commission and the OSCE/ODIHR, which emphasised the unnecessarily strict nature of the restriction imposed on the exercise of the right to freedom of religion by a person solely on the basis of his or her place of study (see paragraph 33 above). In particular, in the Court's view, punishing a person for merely conducting religious rites and rituals on account of his or her place of study can hardly be considered compatible with the exercise of the freedom of religion as protected by Article 9 of the Convention (compare *Serif*, cited above, § 51).

78. Furthermore, the Court is not convinced that a ban preventing any person who obtained his religious education abroad from conducting Islamic religious rites and rituals may constitute an appropriate instrument of the fight

against religious extremism. In that connection, the Court notes that it is apparent that in so far as the restrictions did not regulate the content of the religious expression or the manner of its delivery, they were not fit to protect society from religious extremism or any other forms of intolerance (compare *Ossewaarde v. Russia*, no. 27227/17, § 45, 7 March 2023).

79. In these circumstances, the Court cannot but conclude that the interference with the applicant's right to freedom of religion has not been shown to pursue any "pressing social need". As a result, the interference with the applicant's right, in community with others and in public, to manifest his religion in worship and teaching was not "necessary in a democratic society", for "the protection of public order" under Article 9 § 2 of the Convention

80. There has accordingly been a violation of Article 9 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. 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

82. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

83. The Government contested the amount claimed as unsubstantiated and excessive.

84. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations, and that an award should therefore be made on that account. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 6,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

85. The applicant claimed EUR 8,850 for legal services incurred in the proceedings before the Court and the domestic courts. He submitted the relevant contracts entered into with his representative. According to the contracts, the amounts due were to be paid in the event that the Court found a violation of the applicant's rights. The applicant asked that the award in respect of costs and expenses be paid directly into his representative's bank account.

86. The Government argued that the claim was unsubstantiated and excessive. In particular, they submitted that the applicant had failed to

produce all the necessary documents in support of his claim and that the costs and expenses had not actually been incurred, because the amount claimed had not been paid by the applicant. They also submitted that the work carried out by the applicant's representative did not correspond to the amount claimed.

87. The Court notes at the outset that, although the applicant has not yet actually paid the legal fees, he is required to pay them pursuant to a contractual obligation. Accordingly, in so far as the lawyer is entitled to seek payment of his fees under the contract, the applicant may claim reimbursement of those fees (see *Pirali Orujov v. Azerbaijan*, no. 8460/07, § 74, 3 February 2011; *Rizvanov v. Azerbaijan*, no. 31805/06, § 89, 17 April 2012; *Malik Babayev v. Azerbaijan*, no. 30500/11, § 97, 1 June 2017; *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 371-72, 28 November 2017; and *Ahmadov v. Azerbaijan*, no. 32538/10, § 62, 30 January 2020). 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. However, having regard to the amount of legal work necessary in the present case, the Court considers that the amount claimed in respect of legal fees is excessive and should be awarded only in part. In these circumstances, having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500, covering costs under all heads, to be paid directly into the bank account of his representative.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides*, to join the applications;

2. *Declares*, the complaints under Article 3 (confinement in a metal cage), Article 5 § 3 (alleged lack of justification for the pre-trial detention) and Article 9 (alleged violation of the right to freedom of religion) of the Convention admissible and the complaint under Article 6 § 2 (alleged violation of the right to the presumption of innocence) of the Convention inadmissible;

3. *Holds*, that there has been a violation of Article 3 of the Convention;

4. *Holds*, that there has been a violation of Article 5 § 3 of the Convention;

5. *Holds*, that there has been a violation of Article 9 of the Convention;

6. *Holds*, that there is no need to examine separately the admissibility and merits of the complaint under Article 5 § 4 of the Convention;

7. *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 the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly into the bank account of the applicant's representative;

(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;

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

Done in English, and notified in writing on 1 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Marko Bošnjak President