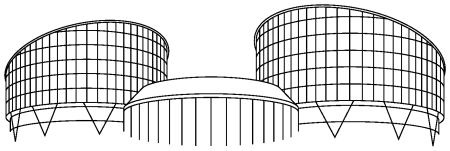

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF RASUL JAFAROV v. AZERBAIJAN

(Application no. 69981/14)

JUDGMENT

STRASBOURG

17 March 2016

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

In the case of Rasul Jafarov v. Azerbaijan,

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

Angelika Nußberger, *President,*
Ganna Yudkivska,
Khanlar Hajiyev,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 23 February 2016,

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

PROCEDURE

1. The case originated in an application (no. 69981/14) 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 Rasul Agahasan oglu Jafarov (*Rəsul Ağahəsən oğlu Cəfərov* – "the applicant"), on 10 October 2014.

2. The applicant was represented by Mr K. Bagirov, a lawyer based in Azerbaijan, and Mrs R. Remezaite, a lawyer based in London. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

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

4. On 3 December 2014 the complaints concerning the alleged breaches of Article 5 §§ 1, 3 and 4, and Articles 11 and 18 of the Convention were communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. On 25 June 2015 a new complaint concerning an alleged failure to comply with the obligations under Article 34 of the Convention was communicated to the Government. The applicant and the Government each submitted written observations on the admissibility and merits of the case. The Council of Europe Commissioner for Human Rights made use of his right under Article 36 § 3 of the Convention to intervene as a third party, and submitted observations in accordance with Rule 44 § 2 of the Rules of Court. Observations were also received from the Helsinki Foundation for Human

Rights, Human Rights House Foundation and Freedom Now, to whom the President had given leave to intervene as third parties in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1984 and lives in Baku.

A. Background

6. The applicant is a well-known civil society activist and human rights defender. He is the Chairman and one of the co-founders of Human Rights Club, a non-governmental organisation (NGO) specialising in the protection of human rights. Human Rights Club was established in December 2010 and has made several unsuccessful attempts to obtain State registration by the Ministry of Justice in order to obtain legal entity status under domestic law. The authorities' refusal to register Human Rights Club is the subject of another application pending before the Court (see application no. 27309/14). The applicant has collaborated with other NGOs in Azerbaijan on various projects. He is also a member of the Board of Directors of the Republican Alternative Civic Movement (REAL).

7. The applicant has been involved in the preparation of various reports relating to human rights issues in Azerbaijan. He has also been involved in promoting the adoption of a Parliamentary Assembly of the Council of Europe (PACE) report on political prisoners in Azerbaijan, and has been working on a consolidated list of political prisoners to be presented to the Council of Europe. He has been a speaker at Council of Europe and United Nations (UN) events, and has submitted shadow reports to UN institutions.

8. The applicant also coordinated the Sing for Democracy campaign (later renamed Art for Democracy) during and after the Eurovision Song Contest 2012 in Baku, which aimed at drawing attention to human rights violations in Azerbaijan.

9. During the June 2014 session of the PACE the applicant presented a report on human rights violations in Azerbaijan at the Council of Europe.

B. Criminal proceedings against the applicant and his remand in custody

10. In recent years a number of human rights activists, lawyers, politicians, journalists and other government critics have been arrested and/or charged with various criminal offences. Those arrests generated wide publicity and were condemned by a number of international organisations, NGOs and prominent individuals (see, for example, paragraphs 83-84 below).

11. On 22 April 2014 the Prosecutor General's Office instituted criminal proceedings under Articles 308.1 (abuse of power) and 313 (forgery by an official) of the Criminal Code in connection with alleged irregularities in the financial activities of a number of NGOs.

12. While the applicant was away in Kyiv from 6 to 11 July 2014 the Sabail District Court ordered a freezing injunction in respect of his bank accounts on 7 July 2014.

13. On 29 July 2014, while travelling by train from Baku to Tbilisi, the applicant was stopped during checks at the Azerbaijani-Georgian border. He was informed that he could not leave the country because a travel ban had been imposed on him on 25 July 2014.

14. On 31 July 2014 the applicant was invited to the Prosecutor General's Office, where he was questioned as a witness in connection with the above-mentioned criminal proceedings (see paragraph 11 above).

15. On 31 July and 1 August 2014 searches were conducted at Human Rights Club, and a number of documents, mainly related to book-keeping and finance, were seized.

16. On 2 August 2014 the applicant was again invited to the Prosecutor General's Office for questioning as a witness. On his arrival at the premises he was arrested and formally charged under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (abuse of power) of the Criminal Code. The description of charges consisted of a single sentence which was one page long. In particular, it was noted that since June 2010 the applicant, as co-founder and Chairman of Human Rights Club, an "organisation lacking State registration", and as a project manager in an NGO named International Cooperation of Volunteers, had received a number of grants from the United States of America's National Endowment for Democracy (NED), various branches of the Open Society Institute Assistance Foundation (OSIAF), Norway's Stiftelsen Fritt Ord and other donor organisations, pursuant to relevant grant agreements. He was accused of acquiring profit, "by paying money to himself and other people involved in the projects in the guise of salaries and service fees" in the amount of 147,900.85 Azerbaijani new manats (AZN), having acquired that money through, "illegal entrepreneurial activity in respect of grants which, as an official, he had failed to register with the relevant executive authority,

even though he had a professional obligation to do so". He was also accused of avoiding payment of taxes under Articles 218, 219 and 220 of the Tax Code in the amount of AZN 6,162.24, thus causing, "significant damage to State interests protected by law, bringing about grave consequences".

17. On the same day, 2 August 2014, the Nasimi District Court, relying on the official charges brought against the applicant and the prosecutor's application for the preventive measure of remand in custody, ordered the applicant's detention for a period of three months. The court justified the decision as follows:

> "Taking into account the gravity of the criminal offences of which the applicant is accused and the possibility of him disrupting the normal course of the investigation by unlawfully influencing people involved in the proceedings or absconding from the investigation if he remains at liberty, the court considers that the preventive measure of remanding him in custody must be applied in his case."

18. On 4 August 2014 the Prosecutor General's Office made a public statement which noted that the applicant had been charged under Articles 192.2.2, 213.1 and 308.2 of the Criminal Code because there was a suspicion that he had committed the criminal offences set out in the above-mentioned Articles.

19. On 4 August 2014 the applicant appealed against the detention order. He argued that there was no "reasonable suspicion" that he had committed a criminal offence, and that his detention was a punishment for carrying out activities which were protected by the Constitution. He further argued that the court had failed to provide any relevant reasons as to the applicability of grounds which could justify his detention. In particular, as to the risk of absconding, the applicant pointed out that the factual circumstances indicated that there was no such risk. He submitted that he had cooperated with the investigating authorities from the very beginning by appearing for questioning and producing documents whenever he had been required to do so, and that he had returned to the country from a trip to Kyiv knowing that he was under investigation. As to the risk of disrupting the investigation, the applicant argued that the existence of such a risk had not been substantiated. He argued that, on the contrary, he had given to the authorities originals of all documents which could be relevant to the investigation, and therefore was not in a position to tamper with the evidence.

20. On 8 August 2014 the Baku Court of Appeal upheld the detention order of 2 August 2014 without addressing any of the applicant's arguments.

21. On 19 August 2014 the applicant applied to the Nasimi District Court, requesting the substitution of remand with either house arrest or release on bail. Among other things, the applicant highlighted the factual circumstances which supported his argument for less restrictive measures, including the fact that he had returned to the country from Kyiv knowing that he was under investigation and had complied with all orders to produce

documents and appear for questioning, and that he, as a human rights defender, was a respected public figure with strong ties to the community.

22. On 20 August 2014 the Nasimi District Court rejected his application, finding that the grounds justifying his detention, as specified in its decision of 2 August 2014, "had not ceased to exist".

23. On 22 August 2014 the applicant appealed, reiterating his arguments in detail. On 28 August 2014 the Baku Court of Appeal upheld the Nasimi District Court's decision of 20 August 2014.

24. On 23 October 2014 the Nasimi District Court extended the applicant's pre-trial detention by three months (to 2 February 2015), finding that the grounds justifying his continued detention, "had not ceased to exist".

25. On 24 October the applicant appealed, reiterating his previous arguments.

26. On 29 October 2014 the Baku Court of Appeal dismissed the appeal, upholding the extension decision of 14 March 2013 and providing the same reasoning as the first-instance court.

27. On an unspecified date in December 2014 the applicant applied to the Nasimi District Court, requesting the substitution of remand with house arrest. On 10 December 2014 the Nasimi District Court rejected his application, finding that the grounds justifying his detention, as specified in its decisions of 2 August and 23 October 2014, "had not ceased to exist".

28. On 12 December 2014 the applicant appealed against the Nasimi District Court's decision of 10 December 2014, reiterating his arguments in detail. On 19 December 2014 the Baku Court of Appeal dismissed the appeal.

29. No further decisions extending the applicant's detention are available in the case file.

30. On 12 December 2014 the Prosecutor General's Office charged the applicant under Articles 179.3.2 (high-level embezzlement) and 313 of the Criminal Code, in addition to the original charges under Articles 192.2.2, 213.1 and 308.2 of the Criminal Code. The description of the allegations against him was slightly expanded, but essentially remained the same as that given on 2 August 2014 (see paragraph 16 above), with additional information alleging that the applicant had falsified various pieces of paperwork and minor contracts for services provided by a number of individuals (presumably in connection with various grant projects) and had not paid them in full as stipulated in the contracts. The new description of charges also included changes to the total amount of the alleged illegal profit obtained by the applicant (AZN 150,170.62) and the alleged amount of unpaid taxes (AZN 6,257.11).

31. The applicant's criminal trial began in January 2015. On 16 April 2015 the Baku Court of Serious Crimes convicted him of all charges and sentenced him to six and a half years' imprisonment and deprivation of the

right to hold official positions in State and local authorities and the right to engage in entrepreneurial activity for a period of three years. The conviction is not yet final and the appeal is pending.

C. Statements by the grant donors

32. Enclosed with his submissions to the Court, the applicant included statements by NED dated 22 October 2014, by the Royal Norwegian Embassy in Baku dated 19 November 2014, by the British Embassy in Azerbaijan dated 12 December 2014, by People In Need dated 12 January 2015, by OSIAF dated 20 and 21 January 2015, by International Bridges of Justice dated 22 January 2015 and by the Fritt Ord Foundation dated 5 February 2015.

33. All of those statements, addressed "To whom it might concern", provided details of the relevant grants and donations awarded to the applicant or Human Rights Club, noted that the applicant had regularly provided the relevant donor with necessary accounting information concerning the expenditure of the funds, and specified that the donor organisations and embassies had every confidence that the funds had been used properly for the relevant projects and initiatives for which they had been awarded.

34. There is no indication in the case file that the above statements have been sought or taken into account by the prosecuting authorities.

D. Statements by public officials and politicians from the ruling party concerning the applicant's case and those of other arrested human rights activists

35. Before and after the applicant's arrest, numerous articles about him were published in the State media and in the media allegedly close to the government. In those articles, he was described as a spy for foreign interests and "a traitor". Moreover, a number of politicians from the ruling political party made similar comments about recently arrested NGO activists and human rights defenders in Azerbaijan, without specifically naming the applicant. The following are some examples of such comments.

36. In January 2012 *Yeni Azerbaijan*, the official newspaper of the ruling party, ran a piece entitled "New Target of National Traitors: Eurovision 2012", which attacked the Sing for Democracy campaign coordinated by the applicant as a campaign against the interests of the country and stated the following:

> "The blackmail and slander campaign of the Alliance to Protect Political Freedoms, Institute for Peace and Democracy, Institute for Reporters' Freedom and Safety, and Human Rights Club is based on ugly intentions which are evident from the names of these organisations. These organisations always orchestrate the ugly plans of several

> interested circles against Azerbaijan and act as mercenaries. The remote control of those who would do anything for money, who easily betray their country and State by launching a black smear campaign in exchange for foreign donations (donations obviously granted for meeting certain interests) is in the hands of those who give the money."

37. Around the time of the applicant's arrest and thereafter, the same newspaper and online news portals affiliated with the authorities published a number of pejorative articles calling the applicant an "American agent", with headlines such as "American Agent Rasul Jafarov Detained for Three Months", "The Rights of Rasul Jafarov, Another Agent, Limited", and "Search of the Flat of American Agent Rasul Jafarov".

38. On 14 August 2014 A.H., the Chairman of the Legal Policy and State Building Committee of the National Assembly, gave an interview to APA news agency where he commented on the reactions to the arrests of Ms Leyla Yunus, Mr Intigam Aliyev and other human rights defenders and stated:

> "... it is those [international organisations] which made them 'well known'. The organisations which have allocated grants to them in non-transparent ways, directing them into various activities, including those against Azerbaijan. These people, some of whom are traitors and some weak-minded, will finally answer before the law."

39. On 15 August 2014 A.H., the Head of the Department of Social and Political Issues of the Presidential Administration, stated the following in an interview with Trend news agency:

> "The most deplorable thing is that such NGOs and individuals and some journalists, relying on foreign circles funding them, placed themselves above the national law, evaded registering their grant projects, filing financial statements, paying taxes and the government's other legal requirements."

40. In an interview published on 2 September 2014 Y.M., a member of parliament from the ruling party, who was also the Director of the Institute of History at the Academy of Sciences, stated the following in respect of the recently arrested NGO activists and human rights defenders:

> "People who betray their motherland cannot be forgiven. ... The death penalty should be imposed on such people. Capital punishment must be the gravest punishment for them. Why should traitors be forgiven? ... Therefore, the activities of a number of non-governmental organisations must be investigated very seriously, and if any illegality is discovered, such organisations must be immediately banned and their leaders punished."

41. On 3 December 2014 State-owned news agencies published a sixty-page manifesto written by R.M., the Head of the Presidential Administration, entitled "The World Order of Double Standards and Modern Azerbaijan". The article accused human rights NGOs operating in the country of being the "fifth column of imperialism". It postulated that various, mostly US-sponsored, donor organisations such as NED, as well as other foreign organisations, supported political opposition movements in

various countries against national governments. For local human rights NGOs, the purpose of such funding schemes was the formation of a "fifth column" inside a country. US taxpayers' money was spent on preparing a change of political power or forcing existing governments to comply with US political demands.

42. According to the applicant, in various speeches given in 2014 the President of the State had stated that foreign criticism of the human rights situation in Azerbaijan had nothing to do with human rights, but was politically motivated, and that within the country there were "national traitors who had sold their conscience to foreign anti-Azerbaijani circles".

E. The applicant's contact with his representative before the Court, Mr Bagirov

43. The applicant's representative, Mr Bagirov, was an advocate and a member of the Azerbaijani Bar Association ("the ABA"). He was affiliated with Law Office no. 6 in Baku.

44. In November 2014 disciplinary proceedings were instituted against Mr Bagirov by the ABA on the basis of a letter dated 25 September 2014 from a judge of the Shaki Court of Appeal. In his letter, the judge informed the ABA that Mr Bagirov had breached the ethical rules of conduct for advocates at court hearings held in September 2014 before the Shaki Court of Appeal during criminal proceedings against I.M.

45. On 10 December 2014 the Collegium of the ABA held a meeting at which it considered the complaint against Mr Bagirov. Following the meeting, the Collegium of the ABA held that Mr Bagirov had breached the ethical rules of conduct for advocates because at the court hearing he had made the following remark about the judicial system, "Like State, like court ... If there were justice in Azerbaijan, Judge [R.H.] would not deliver unfair and partial judgments, nor would an individual like him be a judge" ("*Belə dövlətin belə də məhkəməsi olacaq ... Azərbaycanda ədalət olsaydı, hakim [R.H.] ədalətsiz və qərəzli hökm çıxarmaz, nə də onun kimisi hakim işləməzdi*"). On the same day the Collegium of the ABA decided to refer Mr Bagirov's case to a court, with a view to his disbarment. It also decided to suspend his activity as an advocate (*vəkillik fəaliyyəti*) pending a decision by the court.

46. It appears from documents submitted to the Court that, following Mr Bagirov's suspension as an advocate, the domestic authorities stopped allowing him to meet the applicant in prison.

47. On 29 March 2015 Mr Bagirov sent a letter to the Head of the Prison Service of the Ministry of Justice asking for a meeting with six of his clients who were held in detention, including the applicant. He specified in his letter that he was representing those individuals before the Court, and

requested a meeting with them in connection with their pending cases. The relevant part of the letter reads:

> "I am writing to inform you that I represent the following individuals, who are detained in the penal facilities and temporary detention centres under your authority, before the European Court of Human Rights.
>
> I ask you to allow a meeting with these individuals in connection with the progress of their cases based on their applications lodged with the European Court (the numbers of which are stated below):
>
> ...
>
> 6. Jafarov Rasul Agahasan oglu (Baku Detention Facility, application no. 69981/14)
>
> Attachment: Copies of letters from the European Court and the Azerbaijani government concerning these individuals."

48. A copy of the letter was also sent to the Head of the Serious Crimes Department of the Prosecutor General's Office.

49. By a letter of 14 April 2015, the Deputy Head of the Prison Service refused to allow Mr Bagirov to meet the applicant in prison. The relevant part of the letter reads:

> "Your request for a meeting in the penal facilities and detention centres with the individuals detained in the penal facilities and with convicted inmates in order to provide them with advocacy services has been considered.
>
> In explanation, as your advocacy activity at Law Office no. 6 has been suspended by decision no. 29 of 10 December 2014 of the Bar Association of the Republic of Azerbaijan and you have been disbarred, and [as a result of the fact that] as of that date you can no longer practise as an advocate in court and investigation proceedings, it is impossible to grant you access to the penal establishments as counsel."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 2000 Criminal Code

50. Article 179 of the Criminal Code provided:

> **Article 179. Embezzlement and squandering**
>
> "179.1. Embezzlement or squandering, that is, misappropriation of property belonging to another which has been entrusted to the perpetrator,
>
> is punishable by a fine in the amount of one hundred to five hundred manats, or 360 to 480 hours of community service, or imprisonment for a period of up to two years.
>
> 179.2. Commission of the same acts:
>
> 179.2.1. by a group of persons conspiring in advance;
>
> 179.2.2. repeatedly;
>
> 179.2.3. by means of abusing official authority;
>
> 179.2.4. inflicting significant damage

...

179.3. Commission of the acts provided for in Articles 179.1 and 179.2 of this Code:

...

179.3.2. in particularly large amounts; ...

is punishable by imprisonment for a period of seven to twelve years"

51. Article 192 of the Criminal Code provided:

Article 192. Illegal entrepreneurship

"192.1. Conducting business activity without registration by means of the procedure provided for by the legislation of the Republic of Azerbaijan, or without obtaining a special permit (licence) where such a permit (licence) is required, or with the infringement of licencing conditions, or by using objects whose use is restricted in the absence of special permission, where such activity causes significant damage to citizens, organisations or the State and generates significant income

is punishable by a fine equivalent to twice the value of the damage caused (or income generated) as a result of the criminal offence, or imprisonment for a period of up to six months;

192.2. The same acts:

192.2.1. causing damage of an especially large value;

192.2.2. committed for the purpose of generating an especially large amount of income;

192.2.3. committed by an organised group

are punishable by a fine equivalent to three times the value of the damage caused (or income generated) as a result of the criminal offence, or restriction of liberty for a period of one year, or imprisonment for a period of up to five years."

52. Article 213 of the Criminal Code provided:

Article 213. Tax evasion

"213.1. Evasion of payment of significant amounts of taxes or mandatory State social security contributions

is punishable by a fine in the amount of one thousand to two thousand manats, or correctional work for a period of up to two years, or imprisonment for a period of up to three years, with or without deprivation of the right to hold a certain position or to engage in a certain activity for a period of up to three years. ..."

53. Article 308 of the Criminal Code provided:

Article 308. Abuse of official power

"308.1. Abuse of official power, that is, the deliberate use by an official of his official authority or the deliberate failure of an official to use his official authority when required, contrary to official interests, in connection with the execution of his official duties and with the aim of obtaining an unlawful advantage for himself or for third parties, where this causes serious harm to the rights and lawful interests of individuals or legal entities, or to the interests of society or the State protected by law

is punishable by a fine in the amount of one thousand to two thousand manats, or deprivation of the right to hold a certain office or engage in a certain activity, or correctional work for a period of up to two years, or imprisonment for a period of up to three years;

308.2. The acts set out in Article 308.1 of this Code which have grave consequences or are committed with the aim of interfering with election (or referendum) results

are punishable by imprisonment for a period of three to eight years with deprivation of the right to hold a certain office or engage in a certain activity for a period of up to three years."

54. Article 313 of the Criminal Code provided:

Article 313. Forgery by an official

"Forgery by an official, that is, the entry by an official of information which is known to be false into official documents or information resources, or the making of changes by him or her in such documents or information resources which distort original content, where such acts are committed out of greed or some other personal interest

is punishable by a fine in the amount of five hundred to one thousand manats, or correctional work for a period of one to two years, or imprisonment for a period of up to two years, with deprivation of the right to hold a certain office or engage in a certain activity for a period of up to two years."

B. The 2000 Code of Administrative Offences ("the CAO")

55. Article 223-1.1 of the CAO (Violation of the legislation on giving and receiving grants), as amended on 4 February 2014, provides, *inter alia*, that the failure by a domestic donor or a domestic recipient of a grant to submit copies of the grant agreement or grant decision to the relevant executive authority for registration within the period established by law is punishable by a fine in the amount of: AZN 1,000 to AZN 2,000 (in the case of an individual offender); AZN 1,500 to AZN 2,500 (in the case of an official); and AZN 5,000 to AZN 7,000 (in the case of a legal entity).

The previous version of Article 223-1.1, in force before 4 February 2014, only made legal entities receiving grants liable (as opposed to all recipients, including individuals), and did not provide for any fine in respect of individual offenders.

56. Article 223-1.4 of the CAO, as amended on 4 February 2014, provides, *inter alia*, that conducting banking or any other transactions in connection with grant agreements or grant decisions which have not been registered in accordance with the Law on Grants is punishable by a fine in the amount of AZN 2,500 to AZN 5,000 in the case of an (NGO) official, and AZN 5,000 to AZN 8,000 in the case of a legal entity (the NGO itself).

C. The 2000 Tax Code

57. Article 13.2.27 of the Tax Code defines non-commercial activity as a legal activity whose purpose is not generation of profit and which designates any income received for non-commercial purposes only, including purposes established in a (legal entity's) charter. Such activity is otherwise considered to be commercial.

58. According to Article 106 of the Tax Code, grants, membership fees and donations received by non-commercial organisations are exempt from profit tax on legal entities.

59. Article 165.1.2 of the Tax Code establishes that the import of goods, provision of goods and services, and execution of work by recipients of foreign grants is not subject to value-added tax (VAT).

60. Articles 218, 219 and 220 of the Tax Code concern the simplified tax regime. Legal entities and individual entrepreneurs not required to register for VAT purposes are subject to the simplified tax regime, under which tax is levied at 4% for those conducting business in Baku and 2% for those conducting business in other regions. The taxable base is gross income received from the sale of goods and the provision of work and services, except for income subject to withholding tax. Legal entities working under the simplified tax regime are exempt from property tax.

D. The 2000 Code of Criminal Procedure ("the CCrP")

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

E. The 2003 Law on State Registration of Legal Entities and the State Register

62. Article 4.1, as amended on 4 February pursuant to Law no. 852-IVQD of 27 December 2013, provides:

> "4.1. An organisation, as well as a representative office or branch of a foreign legal entity, wishing to obtain legal entity status in the territory of the Republic of Azerbaijan shall obtain State registration and be entered into the State Register. Commercial organisations, as well as representative offices or branches of foreign legal entities, may carry out activities only after their State registration. Activities being carried out by them in the absence of State registration results in liability in accordance with the law."

F. The 2000 Law on Non-Governmental Organisations (Public Associations and Foundations) ("the NGO Law")

63. Article 16 provides that the State registration of NGOs is carried out by the relevant executive authority (the Ministry of Justice) in accordance with the legislation on State registration of legal entities. An NGO acquires legal entity status only after State registration.

64. Article 24 provides that the property of an NGO comes from the following sources: membership fees paid by its founders or members; property fees and voluntary donations; revenue from the sale of goods, the provision of services or the execution of work; dividends or income from shares, bonds and other securities or deposits; income from the use or sale of its property; grants; and other forms of income not prohibited by law.

65. Article 24-1.5, as amended on 16 November 2014, provides that an NGO receiving a donation must submit information concerning the size of the donation received and its donor(s) to the relevant executive authority in accordance with the procedure established by that authority. No banking or other transactions can be conducted in respect of donations which have not been so notified to the relevant executive authority.

66. Article 24-1.6 provides that economic and legal matters related to the giving, receiving and use of grants are regulated by the Law on Grants.

67. Article 24-2, introduced into the NGO Law on 16 November 2014, provides that an NGO provides services and executes work – as specified in Article 24 of the NGO Law – in accordance with an agreement. An agreement on the provision of services or execution of work funded by foreign financial sources must be submitted to the relevant executive authority for registration (Article 24-2.1). An NGO which provides services or executes work without a relevant agreement, or pursuant to an unregistered agreement, is liable under the CAO (Article 24-2.2).

G. The 1998 Law on Grants

68. Article 1.1 defines a grant as financial aid for preparing and carrying out: humanitarian, social and ecological projects; work on the restoration of destroyed industrial or social facilities or infrastructure in areas damaged as a result of war or natural disaster; programmes in the areas of education, health care, culture, legal advice, information, publishing and sport; programmes in the areas of science, research and design; and other programmes of importance for the State and society. Grants must be only given for specific purposes. With the exception of donations regulated by the NGO Law and financial aid from State authorities, an NGO may not receive any aid in financial or material form in the absence of a grant agreement or grant decision.

69. Article 4.1 provides that either a written agreement between a donor and a recipient or a donor's written decision on giving a grant is a lawful basis for giving, receiving and using the grant.

70. Article 4.2 provides that a grant can be used only for the purposes indicated in the grant agreement or grant decision.

71. Article 4.4, as amended on 4 February 2014 pursuant to Law no. 852-IVQD of 27 December 2013, provides, *inter alia*, that a grant recipient in the Republic of Azerbaijan must submit the grant agreement or grant decision to the relevant executive authority for registration (in accordance with the presidential decree on the implementation of the Law on Grants, the relevant executive authority in respect of non-religious, non-commercial organisations and individuals was the Ministry of Justice).

72. Article 4.5, as amended on 4 February 2014 pursuant to Law no. 852-IVQD of 27 December 2013, provides that no banking or other transactions can be carried out in respect of unregistered grant agreements or grant decisions.

73. Article 5.1 provides that taxation issues relating to money or other aid received as a grant in accordance with the Law on Grants are regulated by the Tax Code. Article 5.2 provides that no fees or other mandatory payments to the State budget may be withheld from the money or other aid received as a grant in accordance with the Law on Grants.

H. Definition of entrepreneurial activity under domestic law

74. Article 13 of the 2000 Civil Code provides:

Article 13. Entrepreneurial activity

"Entrepreneurial activity is an activity carried out independently by a person for the main purpose of obtaining profit (or income in the case of an individual entrepreneur) from the use of property, manufacture and/or sale of commodities, execution of work or provision of services."

75. Article 1 of the 1992 Law on Entrepreneurial Activity provides:

Article 1. Entrepreneurial activity

"Entrepreneurial activity is an activity carried out independently by a person for the main purpose of obtaining profit (or income in the case of an individual entrepreneur) from the use of property, sale of commodities, execution of work or provision of services."

76. Article 13.2.37 of the 2000 Tax Code provides:

"13.2.37. Entrepreneurial activity is an activity carried out independently by a person for the main purpose of obtaining profit (or income in the case of an individual entrepreneur) from the use of property, supply of commodities, execution of work or provision of services."

I. Provisions of domestic law concerning legal assistance for detainees

77. Article 10.2.9 of the 2000 Code of Execution of Punishments ("the CEP") provides that inmates have the right to legal assistance. In accordance with Article 81.7 of the CEP, inmates are entitled to have meetings with advocates and other individuals authorised to provide them with legal assistance at their own request or at the request of their close relatives or legal representatives. The number and duration of such meetings are not limited (Article 81.8 of the CEP). An advocate or other person authorised to provide legal assistance is admitted to a penal establishment on presentation of a document confirming his identity and authority. Meetings are carried out in private at the request of the parties (Article 81.9 of the CEP). Similar provisions are contained in Article 17 of the Internal Disciplinary Rules for Pre-Trial Detention Facilities, approved by the Cabinet of Ministers Decision no. 63 of 26 February 2014.

78. Section 4 (I) of the 1999 Law on Advocates and Advocacy Activity provides that advocacy activity is carried out by persons admitted to the Bar Association in accordance with an established procedure. In accordance with section 4 (II), the defence of accused persons and those under suspicion in criminal proceedings is exclusively an advocacy activity.

J. Decisions of the Plenum of the Supreme Court

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

79. The relevant part of that decision reads:

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

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

80. The relevant part of that decision reads:

> "3. In accordance with the legislation, there must be substantive and procedural grounds justifying remand in custody. The substantive grounds are to be understood

as the evidence establishing a connection between the accused and the commission of the criminal offence of which he has been accused. The procedural grounds consist of the grounds justifying the lawfulness and necessity of remand, as determined by the court from the combination of the circumstances set out in Article 155 of the Code of Criminal Procedure ["the CCrP"].

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

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

The courts must take into account that the consideration of applications for remand or for extension of the detention period in the absence of the accused is allowed only in exceptional circumstances where it is not possible to ensure his presence at the hearing. Those circumstances may exist where the accused has absconded from the investigation, is being treated in a psychiatric hospital or for a serious illness, or where there are extraordinary circumstances, a declaration of quarantine, or other similar circumstances. ...

8. In accordance with Article 447.5 of [the CCrP], when considering an application for remand, a judge has a right to review the documents and material evidence serving as a basis for the application.

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

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

13. ... the courts are reminded that, although the legislator determined the same material and procedural grounds and rules for the consideration of both applications for remand and applications for extension of a detention period, since the extension of a detention period restricts a person's right to liberty as well as his right to the presumption of innocence for a long period, when considering applications of this kind, the courts must be careful, verify the grounds and reasons for the extension of the detention, and justify in a different manner in their decisions the necessity of

extending the detention period from the necessity of the [initial] application of remand.

While considering applications for extension of the accused's detention period, courts must verify in detail the arguments in the application as to why it is not possible to terminate the preliminary investigation within the period previously established. In so doing, they must take into account that, in accordance with the case-law of the European Court of Human Rights, relying on the same grounds which formed the basis of the [initial] application of remand in respect of the accused when ordering the extension of his detention period is considered a violation of the right to liberty and security from the point of view of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."

III. RELEVANT INTERNATIONAL DOCUMENTS

81. The following are extracts from the conclusions reached in the Opinion on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, adopted by the European Commission for Democracy Through Law (Venice Commission) at its 88th Plenary Session (Venice, 14-15 October 2011):

"117. The Venice Commission reckons that, while legislation relating to NGO's legal status has been improved in some aspects over the years, the 2009 amendments and the 2011 Decree unfortunately overturn the previous efforts to meet with the requirements of international standards.

118. The most problematic aspects of the 2009 Amended Law on NGOs and the 2011 Decree pertain to the registration of NGOs generally; the registration of branches and representatives of international NGOs specifically; the requirements relating to the content of the charters of NGOs; and the liability and dissolution of NGOs.

119. With regard to the registration, which in many countries is a rather formal procedure, the 2009 amended version of the Law on NGOs and the 2011 Decree have further added complications to an already complicated and lengthy procedure. The requirement for international NGOs to create branches and representatives and have them registered is of itself problematic."

82. The following are extracts from the conclusions reached in the Opinion on the Law on Non-Governmental Organisations (Public Associations and Funds) as amended of the Republic of Azerbaijan, adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014):

"88. The recent amendments to the Law on NGOs of the Republic of Azerbaijan and to several other legal acts (Law on Registration, Law on Grants, Code of Administrative Offences) have brought some limited positive changes: A specific period of up to 30 days is provided for within which NGOs are to rectify their alleged violations brought to their attention by a notification from state authorities. The right of NGOs to appeal to administrative bodies or to a court with respect of any measure of liability defined by law is now explicitly recognized.

89. Despite these positive changes, the amendments have not addressed many of the recommendations contained in the 2011 Opinion of the Venice Commission. The procedure of registration of NGOs has not been simplified in any substantive way, branches and representations of foreign NGOs are still object of specific, and problematic, regulation, and NGOs can still be dissolved for misgivings which are not serious enough to justify the imposition of the most severe sanction.

90. In addition, the amendments have introduced certain new controversial provisions. Branches and representations of foreign NGOs have been put into a yet more disadvantaged position with respect to other NGOs: additional reporting obligations, special penalties, limited validity of the agreements signed with the state and the excessive discretion of the state authorities to intervene in the matters of their internal life (obligatory content of their internal documents etc.).

91. Moreover, new obligations are imposed on NGOs with respect to the receipt of grants and donations and to reporting to the state authorities. Again, some of these obligations seem to be intrusive enough to constitute a *prima facie* violation of the right to freedom of association.

92. In general, the enhanced state supervision of NGOs seems to reflect a very paternalistic approach towards NGOs and calls again for sound justification. The same holds for new and enhanced penalties that can be imposed upon NGOs even for rather minor offences.

93. Globally, the cumulative effect of those stringent requirements, in addition to the wide discretion given to the executive authorities regarding the registration, operation and funding of NGOs, is likely to have a chilling effect on the civil society, especially on those associations that are devoted to key issues such as human rights, democracy and the rule of law. Like the Council of Europe Commissioner on Human Rights has, the Venice Commission finds that the amendments, in an overall assessment, '*further restrict the operations of NGOs in Azerbaijan*'."

83. On 19 August 2014 the Office of the UN High Commissioner for Human Rights published the following press release:

"**Persecution of rights activists must stop – UN experts call on the Government of Azerbaijan**

GENEVA (19 August 2014) – United Nations human rights experts [Michel Forst, the Special Rapporteur on the situation of human rights defenders; Maina Kai, the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and David Kaye, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression] today condemned the growing tendency to prosecute prominent human rights defenders in Azerbaijan, and urged the Government 'to show leadership and reverse the trend of repression, criminalization and prosecution of human rights work in the country.'

'We are appalled by the increasing incidents of surveillance, interrogation, arrest, sentencing on the basis of trumped-up charges, assets-freezing and ban on travel of the activists in Azerbaijan,' they said. 'The criminalization of rights activists must stop. Those who were unjustifiably detained for defending rights should be immediately freed.'

The experts highlighted the specific cases of Leyla Yunus, director of the Azerbaijani Institute of Peace and Democracy; Arif Yunus, head of Conflict Studies in the Institute of Peace and Democracy; Rasul Jafarov, coordinator of Art of

Democracy and head of Human Rights Club; and Intigam Aliyev, chair of Legal Education Society.

'We are alarmed at the wave of politically-motivated repression of activists in reprisal for their legitimate work in documenting and reporting human rights violations,' they noted, reiterating their grave concerns about the deteriorating situation in the country for the third time in less than a year.

The UN experts reminded the authorities of their legal obligations under international human rights law, which guarantees everyone in Azerbaijan the rights to freedom of expression, of peaceful assembly and association, without undue interference.

'The State's primary responsibility should be to protect its civil society activists from intimidation, harassment, threats or attacks,' they stressed.

'Azerbaijan's recent membership of the UN Committee on Non-Governmental Organizations does not square well with the authorities' actions directed at stifling freedoms on the ground,' the UN rights experts noted."

84. On 20 August 2015 the Office of the UN High Commissioner for Human Rights published the following press release:

"'Deeply distressing' – UN experts condemn latest prison sentencing of rights defenders in Azerbaijan

GENEVA (20 August 2015) – A group of United Nations human rights experts [Michel Forst, Special Rapporteur on the situation of human rights defenders; Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association; David Kaye, Special Rapporteur on freedom of opinion and expression; Mónica Pinto, Special Rapporteur on the independence of judges and lawyers; Dainius Pûras, Special Rapporteur on the right to health; and Seong-Phil Hong, Chair-Rapporteur of the UN Working Group on Arbitrary Detention] today condemned the recent prison sentencing of prominent Azerbaijani human rights activists Leyla and Arif Yunus as 'manifestly politically motivated and representative of the continuing repression of independent civil society in Azerbaijan.'

On 13 August 2015, the Baku Grave Crimes Court sentenced Ms. and Mr. Yunus to eight and a half and seven years' imprisonment respectively on charges of fraud, tax evasion, and illegal entrepreneurship. They also face charges of treason.

'The authorities of Azerbaijan must put an end immediately to all forms of persecution against human rights activists in the country,' the experts said. 'Leyla and Arif Yunus are two of many activists in Azerbaijan, which include Anar Mammadli, Rasul Jafarov and Intigam Aliyev, who have been targeted because of their legitimate human rights work.'

'Criminalization of those working for the promotion and protection of human rights in the country is deeply disconcerting,' the experts said, reiterating a call on the authorities they made one year ago 'to reverse the trend of repression, criminalization and prosecution of human rights work in the country.'

'Silencing these prominent voices is having a devastating impact on the Azerbaijani civil society as a whole,' the experts warned.

They expressed further concern about the serious deterioration of the health of the two human rights activists during their extended period in pre-trial detention, as well

as throughout the course of their trial. 'We call on the Azerbaijani authorities to immediately provide them with adequate medical care,' they said.

The human rights experts also drew attention to the fact that Ms. and Mr. Yunus' trial fell short of international norms and standards on the right to a fair trial. 'We are troubled at the lack of examination of the evidence provided and the refusal to allow international independent observers into the courtroom during the trial proceedings,' the experts noted.

The UN experts reminded the Azerbaijani authorities of their legal obligations under international human rights law that guarantees everyone in Azerbaijan the rights to freedom of opinion, expression and association, the right not to be arbitrarily deprived of liberty, the right to a fair trial and the right to enjoy the highest attainable standard of physical and mental health.

'The State has the primary responsibility to protect human rights defenders from any form of harassment, intimidation and retaliation arising as a result of their legitimate and peaceful human rights activities,' they stressed."

THE LAW

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

85. Relying on Article 5 §§ 1 (c) and 3 of the Convention, the applicant complained that he had been arrested and detained in the absence of a "reasonable suspicion" that he had committed a criminal offence. He further complained that the domestic courts had failed to provide relevant and sufficient reasons justifying the necessity of his continued detention. Article 5 §§ 1 (c) and 3 of the Convention reads:

"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

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

B. Merits

1. The parties' submissions

(a) The applicant

87. The applicant submitted that there was insufficient evidence and information to establish a "reasonable suspicion" that he had committed any of the criminal offences with which he had been charged.

88. He submitted that the activities of Human Rights Club, even in the absence of State registration, could not be considered illegal entrepreneurial activities. Human Rights Club was a non-governmental and non-commercial organisation. The Law on State Registration only prohibited commercial legal entities from operating without State registration. In contrast, there was no such prohibition in domestic law in respect of non-commercial legal entities. This had previously been confirmed by the Government and various domestic authorities both at domestic level and before the Court. Accordingly, Human Rights Club could legally operate in the absence of State registration, and the non-commercial nature of its activities could not be classified as illegal or commercial activities on that ground. In this connection, the applicant also referred to reports by the Council of Europe's Commissioner for Human Rights and the Venice Commission, which stressed the cumbersome nature of State registration of NGOs and made reference to how this inevitably drove a number of NGOs to operate on the fringes of the law, and which also stressed that new amendments introduced to the Law on State Registration and the NGO Law since 2009 had overturned previous efforts to meet the requirements of international standards.

89. Since, owing to the above-mentioned problems, Human Rights Club lacked State registration – which is the subject of a separate application before the Court (application no. 27309/14) – it could not receive grants under domestic law. Therefore, the applicant, as its chairman, had received grants, signed agreements, opened bank accounts and conducted other activities in his individual capacity. The applicant submitted that, although registration of grants with the Ministry of Justice was required, before February 2014 the procedure for registering grants received by individuals had not been established, and there had been no rules prohibiting the expenditure of received grants or determining liability in that regard.

90. As for the criminal charges brought against him in connection with the use of unregistered grants, the applicant submitted that the failure to register grants, which was due to a lack of clear legal requirements and procedures, could not automatically qualify the use of granted funds as commercial ("entrepreneurial") activity. Each grant agreement clearly set out the manner of the relevant grant and what type of activities it would fund. The registration, or lack thereof, of that agreement could not change the nature of the activities on which the grant was spent. Until February 2014 domestic law had only provided for the registration of grants received by legal entities; until then there had been no procedure established for the registration of grants received by individuals. Following this development, the applicant had stopped signing any grant agreements with donors.

91. Under domestic law, it was clear that failure to register a grant gave rise to liability under Article 223-1.1 of the CAO and was punishable by a fine. Receiving and using grants without registering them did not constitute a criminal offence, because the activity for which those grants were used was not commercial.

92. In particular, Article 192.2.2 of the Criminal Code related to commercial activity conducted illegally. The domestic law provided a clear definition of what constituted commercial (or "entrepreneurial") activity. However, the applicant's activities were non-commercial. The mere fact that he had not registered grants received for conducting that non-commercial activity did not change the nature of that activity. Charging him under Article 192.2.2 of the Criminal Code had therefore been unlawful and arbitrary.

93. The charges under Articles 231.1 (tax evasion) and 308.2 (abuse of power) were derived from the first charge under Article 192.2.2 of the Criminal Code. By wrongly interpreting the applicant's activity as commercial, the investigating authority had concluded that he had evaded paying taxes applicable to commercial profits and had abused his official powers by engaging in illegal commercial activities and avoiding payment of taxes.

94. The new charge of embezzlement brought against him in December 2014 had likewise been arbitrary. It was unclear from this charge to whom the embezzled money belonged, as no victim of the alleged offence had been mentioned in the case material.

95. For the above reasons, the applicant argued that there had been no "reasonable suspicion" that he had committed the criminal offences of which he had been accused. The charges against him were trumped up and aimed at preventing him from continuing his activities.

96. The applicant further argued that his detention had not been in compliance with the requirements of Article 5 § 3 of the Convention, because the domestic courts had failed to provide "relevant and sufficient"

reasons justifying his pre-trial detention, and had also failed to properly consider whether alternative preventive measures could have been applied.

(b) The Government

97. In respect of the requirements of Article 5 § 1 (c) of the Convention, the Government submitted that the applicant had been arrested on the basis of investigative measures taken following the receipt of information and material from the Ministry of Justice that a number of NGOs had illegally received grants from branches and representative offices of foreign NGOs. That material and information had been further corroborated by the applicant's statements made on 31 July 2014, which had been sufficient to justify the applicant's arrest under domestic law. Accordingly, the Government argued that there had been sufficiently specific information to raise a reasonable suspicion that the applicant had committed a criminal offence.

98. In respect of the requirements of Article 5 § 3 of the Convention, the Government argued that the courts had given relevant and sufficient reasons for their decisions that there had been a risk that, if not detained, the applicant would abscond from the investigation or hinder the proper conduct of the proceedings. Whilst it certainly would have been desirable for the domestic courts to have given more detailed reasoning as to the grounds for the applicant's detention, in the circumstances of the present case this did not amount to a violation of his rights under Article 5 § 3.

(c) The third parties

(i) The Council of Europe Commissioner for Human Rights

99. The Commissioner submitted that the present case was an illustration of a serious and systemic human rights problem in Azerbaijan, which, in spite of numerous efforts by the Commissioner and other international stakeholders, to date remained unaddressed. The Commissioner's observations focused on the major problem areas identified and observed during his visits to Azerbaijan in November 2012, May 2013 and October 2014.

100. In particular, the Commissioner expressed his concern about interferences with freedom of expression and the apparent intensification of the practice of unjustifiably or selectively prosecuting journalists and others who expressed critical opinions. He stated that several people working in the media had recently been prosecuted for incitement to national, racial or religious hatred and in some instances terrorism, as well as for hooliganism, tax evasion, drug possession and illegal possession of weapons. The Commissioner pointed to consistent reports that those cases were based on charges which lacked credibility and often followed critical reporting or posts on the Internet.

101. With regard to freedom of association, a number of NGOs, especially those operating in the field of human rights and those openly critical of the government, were reported to encounter severe obstacles in carrying out their work in Azerbaijan. Domestic NGOs faced difficulties, especially with regard to the restrictive application of the regulations on registration, which could result in long delays or the absence of any formal decision on registration. Moreover, the 2013 amendments to the Law on NGOs, the Law on Grants and the Code of Administrative Offences further restricted the operations of NGOs. Those amendments required NGOs to sign a formal grant agreement for any funding exceeding AZN 200. A failure to submit a copy of the grant agreement to the Ministry of Justice could result in the management of an NGO being fined an amount between AZN 1,500 and 2,500, and between AZN 5,000 and 7,000 in the case of legal entities. The NGO itself could also face fines and confiscation of property. In accordance with the amendments, the only way for an NGO to receive funding exceeding AZN 200 was by bank transfer. This created a problem for NGOs which were unregistered and consequently unable to open bank accounts. Cumbersome requirements for registration inevitably drove a number of NGOs to operate on the fringes of the law. The Commissioner had stated in his 2013 report that those amendments made the already onerous reporting obligations for NGOs even more onerous.

102. Subsequent amendments to the Law on NGOs and the Law on Grants, adopted in December 2013 and signed into law in February 2014, introduced additional administrative requirements with regard to NGO registration, the receipt and use of grants by NGOs and their reporting obligations. They also introduced new offences punishable by fines, notably those for operating without registration. Further amendments were introduced in October 2014, adding new regulations relating to the receipt of grants and donations by NGOs. New and enhanced penalties could be imposed for even rather minor offences. The cumulative effect of those stringent requirements was likely to have a chilling effect on civil society.

103. In the Commissioner’s view, a number of recent arrests and detentions of Azerbaijani human rights defenders were related to the above-mentioned shortcomings in the NGO legislation and the way in which the legislation was implemented. Irregularities found in the activities of a number of the NGOs concerned actually derived from the onerous legislative framework relating to registration, reporting obligations, grants legislation and tax requirements. Notably, the charges in the present case and other cases had flowed from solutions which had had to be found by the human rights defenders in order to circumvent the difficulties of running an unregistered association and securing funding to continue its activities. The Commissioner was of the opinion that, by deliberately attempting to make independent human rights work in Azerbaijan impossible, the restrictive legislative framework constituted an integral part of the pattern of judicial

harassment and reprisals against human rights defenders currently prevailing in Azerbaijan.

104. The Commissioner further stated that the applicant's arrest and detention in August 2014 had been part of a more general crackdown on human rights defenders in Azerbaijan, which had intensified over the summer of 2014. The prosecutions of human rights defenders and prominent journalists for their engagement in activities which should be perfectly legal in a well-functioning democracy constituted reprisals against those who had cooperated with the Council of Europe or other organisations and denounced human rights violations in the country.

105. The applicant's case provided a disturbing illustration of this pattern of reprisals. Among his other activities, the applicant was a long-standing partner of the Council of Europe. He had provided the organisation with valuable information about the human rights situation in Azerbaijan over the past several years, and had also organised and participated in a number of side events during sessions of the PACE.

106. The Commissioner stated that the charges against the applicant were identical to those brought against a number of other human rights defenders, and had been brought shortly after his participation in a Council of Europe event in Strasbourg where he had drawn attention to negative developments in the field of human rights in Azerbaijan, including the new registration and reporting requirements imposed on NGOs. The Commissioner shared the concern expressed by many that the applicant's arrest and detention had been an attempt to silence his efforts to report on human rights violations, and had aimed to prevent him from continuing his work. In cases like that of the applicant, there were concerns that pre-trial detention was imposed in the absence of a reasonable suspicion that a criminal offence had been committed, and was used as a means of silencing those expressing dissenting views and preventing them from providing information to international human rights bodies.

(ii) Helsinki Foundation for Human Rights, Human Rights House Foundation and Freedom Now

107. The third parties submitted that in recent years the situation involving the targeting of human rights defenders, journalists and activists in Azerbaijan had grown increasingly dire, as evidenced by the almost complete shutdown of independent human rights organisations, the striking expansion in scope and severity of specious criminal charges used against civil society leaders, and the adoption of legislation regulating and controlling NGOs. Of particular concern was the imprisonment of human rights defenders, journalists and activists who had intensively cooperated with the Council of Europe and engaged with other international monitoring mechanisms.

108. Since 2009 a number of amendments had been made to the NGO laws, severely limiting the ability of NGOs to operate. Although State registration was not absolutely required by law, it was necessary in order for an NGO to obtain legal status and hence take actions with legal consequences, such as opening a bank account. The government interfered with the registration process by prolonging the application stage with repeated and arbitrary requests for clarification and additional documentation, as opposed to simply rejecting an application for registration.

109. In addition to imposing a legal requirement for NGOs to be registered in order to fully operate, legislation had also been adopted requiring NGOs to register grants they received with the State authorities. In response to the difficulties that human rights NGOs faced when trying to register as a legal entity, individuals managing unregistered NGOs had been receiving grant funds through another, registered NGO, or as a registered individual taxpayer.

110. The legislative amendments prohibited NGOs from receiving cash donations exceeding AZN 200 and introduced penalties of heavy fines and confiscation of property for violations of this rule. In addition, the amendments also established heavy fines for failures to register grant agreements with the Ministry of Justice within the required time period, as well as for failures to include required information about grants in financial reports to the authorities. As a direct consequence, since May 2014 the authorities had frozen the bank accounts of at least fifty independent organisations and, in many cases, those of their staff members, forcing them to suspend their activities.

111. According to the third parties, the government had recently adopted a strategy of applying vague and perplexing administrative requirements combined with certain criminal laws in order to imprison human rights defenders. While that strategy could be confusing when considered at face value, upon further scrutiny the government's "legal theory" was exposed as follows.

112. Firstly, the authorities alleged, sometimes falsely, that an NGO had failed to comply with some legal provision concerning the requirement to register grants. In other cases, grants were indeed not registered, but this was as a result of government intransigence, where organisations had tried in earnest to comply with the requirements of the law, but the government had simply refused their applications either unfairly or illegally. An example of this was the case of Human Rights Club, the applicant's NGO.

113. Secondly, instead of imposing a fine in accordance with the relevant legislation on NGOs and grants, the authorities charged the individual leader of an NGO with unrelated offences under the Criminal Code, such as illegal entrepreneurship, tax evasion and abuse of power. Thus, the authorities' strategy meant that a failure to comply with

administrative obligations to register NGOs and their funding rendered the activity of the NGO "commercial", thereby subjecting it to a different set of regulatory and tax requirements. The authorities then accused the NGO's leadership of failing to comply with the commercial regulations and alleged associated criminal liability. The third parties argued that changing the tax regime from non-profit to commercial was not a matter within the authorities' discretion, even in the event of a failure to comply with some administrative requirements.

2. The Court's assessment

114. Article 5 § 1 of the Convention contains an exhaustive list of permissible grounds for deprivation of liberty which must be interpreted strictly. A person may be detained under Article 5 § 1 (c) only in the context of criminal proceedings, for the purpose of bringing him before the competent legal authority on "reasonable suspicion" of "having committed an offence" (see *Jėčius v. Lithuania*, no. 34578/97, § 50, ECHR 2000-IX).

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

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

117. When assessing the "reasonableness" of a suspicion, the Court must be in a position to ascertain whether the essence of the safeguard afforded by Article 5 § 1 (c) has been secured. Consequently, a respondent Government have to furnish at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of

having committed the alleged offence (see *Fox, Campbell and Hartley*, cited above, § 34 *in fine*).

118. Apart from its factual aspect, which is most often in issue, the existence of such a suspicion additionally requires that the facts relied on can reasonably be considered criminal behaviour under domestic law. Thus, clearly there could not be a "reasonable suspicion" if the acts held against a detained person did not constitute an offence at the time they were committed (see *Włoch v. Poland*, no. 27785/95, §§ 108-09, ECHR 2000-XI).

119. The Court notes that the applicant in the present case complained of the lack of "reasonable" suspicion against him throughout the entire period of his pre-trial detention, including both during the initial period following his arrest and the subsequent periods when his remand in custody was authorised and extended by court orders. In this connection, the Court reiterates that the persistence of reasonable suspicion that an arrested person has committed an offence is a prerequisite for the lawfulness of his continued detention (see, among many other authorities, *Stögmüller v. Austria*, 10 November 1969, p. 40, § 4, Series A no. 9, and *McKay v. the United Kingdom* [GC], no. 543/03, § 44, ECHR 2006-X). Accordingly, while reasonable suspicion must exist at the time of the arrest and initial detention, in cases of prolonged detention it must also be shown that the suspicion persisted and remained "reasonable" throughout the detention (see *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 90, 22 May 2014).

120. The Court has to have regard to all the relevant circumstances in order to be satisfied that objective information existed showing that the suspicion against the applicant was "reasonable". In this connection, at the outset, the Court considers it necessary to have regard to the general context of the facts of this particular case. Having assessed the submissions by the third parties (see paragraphs 99-113 above) and the opinions of the Venice Commission (see paragraphs 81-82 above), the Court agrees that in recent years the legislative environment regarding the operation of non-governmental, non-commercial organisations, including the regulation of matters relating to their State registration, funding and reporting requirements, has grown increasingly harsh and restrictive. A number of recent amendments to various legislative instruments introduced additional registration and reporting procedures and heavy penalties. There have been long-standing problems with the State registration of NGOs in Azerbaijan (in this connection, see also *Ramazanova and Others v. Azerbaijan*, no. 44363/02, 1 February 2007; *Nasibova v. Azerbaijan*, no. 4307/04, 18 October 2007; *Ismayilov v. Azerbaijan*, no. 4439/04, 17 January 2008; and *Aliyev and Others v. Azerbaijan*, no. 28736/05, 18 December 2008, in which cases the Court found violations of Article 11 of the Convention). Even following the reforms to the registration procedures regulated by the

Law on State Registration, the Court has been receiving new applications concerning allegedly arbitrary delays in State registration of NGOs. Indeed, one of those applications was lodged by Human Rights Club, the NGO founded by the applicant, and has been communicated to the respondent Government (see application no. 27309/14). Furthermore, the above-mentioned sources were of the view that the new onerous regulations, coupled with the reportedly intransigent and arbitrary manner in which they were applied by the authorities, made it increasingly difficult for NGOs to operate. The Court takes note of the third parties' argument that the above circumstances drove a number of NGOs to operate on the fringes of the law in order to continue securing funding for their activities. While the Court is not called upon to give a judicial assessment of the general situation outlined above in the context of the present complaint, it nevertheless considers that this background information is extremely relevant to the present case and calls for particularly close scrutiny of the facts giving rise to the charges brought against the applicant.

121. Turning to the circumstances of the present case, the Court notes that the description of the three original charges brought against the applicant on 2 August 2014 lacked a certain level of coherence, order and clarity that could be expected of a document of this nature. In particular, the description consisted of a single sentence spanning about one page of printed text. It can be discerned from that description that the applicant was accused of operating an NGO lacking State registration and receiving a number of grants during the period between 2010 and 2014 which he had failed to register with the Ministry of Justice as required by law. The financial and other activities involving the grant money were considered "illegal entrepreneurial activity" because the grants had not been registered. Furthermore, all of the grant money received during that period (AZN 147,900.85, later adjusted to AZN 150,170.62) was deemed to be "profit" acquired by the applicant from this illegal entrepreneurial activity, on which he had allegedly failed to pay simplified tax at the rate of 4% under Articles 218, 219 and 220 of the Tax Code and in the amount of AZN 6,162.24 (later adjusted to AZN 6,257.11), as such committing a criminal offence of tax evasion. The above factual information was also the basis for an accusation that the applicant had committed a criminal offence of abuse of power.

122. It can be deduced from the above that all the misconduct attributed to the applicant essentially stemmed from the fact that he had operated an NGO lacking State registration and had failed to register the grants received. No other information or evidence supporting the suspicion was shown to exist, either at the time he was accused or throughout the entire period of pre-trial detention. For the reasons set out below, the Court considers that the above facts relied on by the prosecuting authorities cannot be considered

sufficient to satisfy an objective observer that the applicant might have committed the offences he was charged with.

123. The Court notes that, in contrast to commercial organisations, the domestic legislation did not prohibit the functioning of non-commercial organisations (NGOs) in the absence of State registration (see paragraph 62 above). This has previously been confirmed by the Government in their submissions before the Court in other cases (see *Ramazanova and Others*, cited above, § 48; *Nasibova*, cited above, § 24; *Ismayilov*, cited above, § 44; and *Aliyev and Others*, cited above, § 28). However, in practice, NGOs faced difficulties in functioning properly, as they could not, *inter alia*, open bank accounts or receive funding as a legal entity. It is specifically owing to these difficulties that the applicant conducted the impugned activities in his individual capacity.

124. As for the applicant's failure to register the grants he received in his individual capacity, the Court notes his submission that the reason why he had not registered the grants was that, before February 2014, a procedure for registering grants received by individuals had not been established. The Government did not attempt to refute this claim or submit any information to the contrary.

125. However, even assuming that such a procedure had been in place and that the applicant had failed to comply with it, the Court remains unconvinced that such misconduct could have given rise to a reasonable suspicion that he had committed a criminal offence. Neither the domestic authorities nor the Government were able to refer to any provision of the Criminal Code which specifically criminalises a failure to register grants. Instead, rather inexplicably, the prosecuting authority claimed that the alleged failure by the applicant to register the grants should result in characterisation of the use of those grants as illegal commercial ("entrepreneurial") activity. However, as discussed below, no lawful or factual basis for that claim has been demonstrated.

126. The Court notes that the domestic law provided clear definitions of commercial and non-commercial activities, with the differentiating factor being whether or not the purpose of the activities was the generation of profit (see paragraphs 57 and 74-76 above). Non-commercial activity was not subject to profit tax or value-added tax (see paragraphs 58-59).

127. The applicant received a number of grants as an individual recipient, which was allowed by law. The money was received on the basis of the grant agreements indicating the specific non-commercial purposes on which the funds were to be spent, as required by the Law on Grants (see paragraphs 68-70 above). Upon the completion of various projects, the relevant donors confirmed that the money had been spent as designated in the relevant agreements (see paragraphs 32-34 above). These circumstances create a clear presumption that the applicant was engaging in

non-commercial activities which were not prohibited by law and were not aimed at generating profit.

128. It was never claimed that the actual purposes for which the grants had been allocated were illegal, or that any of the actual activities conducted by the applicant using grant funds had been illegal. The Court cannot accept the Government's argument that a mere failure to register a grant implied that the money was "received illegally". Having regard to the relevant legislation (see paragraphs 69 and 71 above), the Court notes that the requirement to submit grants for registration to the Ministry of Justice was merely a reporting requirement, and not a prerequisite for legal characterisation of the received financial assistance as a "grant". Failure to meet this reporting requirement was an administrative offence specifically proscribed by Article 223-1.1 of the CAO and punishable by a fine (only after February 2014 in the case of individual recipients). Non-compliance with this reporting requirement had no effect on the nature of a grant agreement defined and regulated by Articles 1.1 and 4.1 of the Law on Grants (see paragraphs 68-69 above), or on the characterisation of the activities for which the grant was used as non-commercial.

129. However, from the documents in the case file it appears that, apart from relying on the applicant's alleged failure to comply with the reporting requirement to register the grants, which in itself was not criminalised under the domestic law, the prosecuting authorities never demonstrated the existence of any information or evidence showing that the applicant might have used the money for generating profit or for purposes other than those indicated in the grant agreements, or that the purposes indicated in the grant agreements were both commercial and illegal. Likewise, the Government failed to demonstrate that any other witness statements, documents or other evidence or information existed which could serve as the basis for the suspicion that the applicant had engaged in criminal activities. Furthermore, it has not been demonstrated that any such evidence was ever presented by the prosecuting authorities to the domestic courts which ruled on the applicant's continued detention (compare *Ilgar Mammadov*, cited above, §§ 96-99). In this regard, the Court also takes note of the decision of the Plenum of the Supreme Court of 3 November 2009. That decision required domestic courts to subject prosecuting 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 paragraph 80 above). However, in the present case, the above instructions were not taken into account (compare *Ilgar Mammadov*, cited above, § 97).

130. In such circumstances, the Court finds that the applicant could not have been reasonably suspected of having committed the criminal offence of "illegal entrepreneurship" under Article 192.2.2 of the Criminal Code,

because there were no facts, information or evidence showing that he had engaged in commercial activity or the offence of "tax evasion" under Article 213 of the Criminal Code, as in the absence of such commercial activity there could be no taxable profit under the simplified regime. Furthermore, the above-mentioned facts were not sufficient to give rise to a suspicion that the applicant had sought to "obtain unlawful advantage for himself or for third parties", which was one of the constituent elements of the criminal offence of "abuse of power" under Article 308 of the Criminal Code (compare, *mutatis mutandis*, *Lukanov v. Bulgaria*, 20 March 1997, § 44, *Reports of Judgments and Decisions* 1997-II).

131. As for the additional charges under Articles 179.3.2 and 313 of the Criminal Code, brought against the applicant on 12 December 2014, the Court notes that they were brought after the latest domestic court order of 23 October 2014 extending the applicant's pre-trial detention. As such, all previous decisions ordering and extending the applicant's pre-trial detention had been based solely on the original charges under Articles 192.2.2, 213 and 308 of the Criminal Code, and therefore the new charges were of no significance to the assessment of the reasonableness of the suspicion underpinning the applicant's detention during the period falling within the scope of the present case, and the Government have not expressly argued otherwise.

132. In any event, the Court notes that, as with the original charges, the description of the new charges essentially remained the same and lacked a sufficient level of coherence. There was additional information regarding alleged deficiencies in some service contracts concluded by the applicant and amounts paid under these contracts. Presumably, this was the basis for the suspicion that the applicant had committed the offence of "forgery by an official" under Article 313 of the Criminal Code. However, the Government again failed to produce before the Court any specific evidence or information which could constitute the basis for the prosecuting authorities' suspicions in this regard. As for the charge of embezzlement under Article 179.3.2 of the Criminal Code, the Court cannot characterise it as anything other than spurious, given that the money was given to the applicant voluntarily by donors under grant agreements and that the donors expressed complete confidence that the money had been spent properly for the purposes for which it had been allocated. Taking into account the manifest unreasonableness of the original three charges against the applicant (see paragraph 130 above) and the heightened level of scrutiny required by the specific context of the present case (see paragraph 120 above), the Court considers that the respondent Government also failed to satisfy the Court that the applicant was reasonably suspected of having committed the alleged offences under Articles 179.3.2 and 313 of the Criminal Code.

133. The Court is mindful of the fact that the applicant's case has been taken to trial. That, however, does not affect the Court's findings in

connection with the present complaint, where it is called upon to consider whether the deprivation of the applicant's liberty during the pre-trial period was justified on the basis of the information or facts available at the relevant time. In this respect, having regard to the above analysis, the Court finds that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention. Accordingly, during the period the Court is considering in the present case, the applicant was deprived of his liberty in the absence of a "reasonable suspicion" of his having committed a criminal offence.

134. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

135. The above finding makes it redundant to assess whether the reasons given by the domestic courts for the applicant's continued detention were based on "relevant and sufficient" grounds, as required by Article 5 § 3 of the Convention. Therefore, the Court does not consider it necessary to examine separately any issues under Article 5 § 3 of the Convention.

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

136. The applicant complained that the domestic courts had not properly assessed the arguments the defence had put forward in favour of his release. He relied on Article 5 § 4 of the Convention, which provides:

> "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

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

B. Merits

1. The parties' submissions

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

139. The Government argued that the applicant and his lawyers had been heard by the domestic judges 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. Even if the applicant's arguments had not been addressed in a detailed manner in the judicial decisions, the material in the case file, including records of court hearings, showed that the judges had heard the applicant's arguments and had taken decisions they considered to be the most appropriate in the circumstances.

2. The Court's assessment

140. The Court reiterates that Article 5 § 4 of the Convention entitles arrested or detained persons to a review of the procedural and substantive conditions which are essential for the "lawfulness" – in Convention terms – of the deprivation of their liberty. This means that the competent court has to consider not only compliance with the procedural requirements of domestic law, but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention (see *Brogan and Others*, cited above, § 65, and *Butkevičius v. Lithuania*, no. 48297/99, § 43, ECHR 2002-II (extracts)).

141. The requirement of procedural fairness under Article 5 § 4 does not impose a uniform, unvarying standard to be applied irrespective of the context, facts and circumstances. Although it is not always necessary that an Article 5 § 4 procedure be attended by the same guarantees as those required under Article 6 for criminal or civil litigation, it must have a judicial character and provide guarantees appropriate to the type of deprivation of liberty in question. Thus, the proceedings must be adversarial and must always ensure "equality of arms" between the parties (see *A. and Others v. the United Kingdom* [GC], no. 3455/05, § 203-04, ECHR 2009, with further references). Furthermore, while Article 5 § 4 of the Convention does not impose an obligation to address every argument contained in a detainee's submissions, the judge considering submissions against pre-trial detention must take into account concrete facts which are referred to by the detainee and are capable of casting doubt on the existence of those conditions essential for the "lawfulness" – for Convention purposes – of the deprivation of liberty (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 61, ECHR 1999-II).

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

namely the Nasimi District Court as the first-instance court and the Baku Court of Appeal as the appellate court.

143. As the Court has observed above, the domestic courts in the present case consistently failed to verify the reasonableness of the suspicion underpinning the applicant's arrest (see paragraph 129 above). In their decisions, the domestic courts limited themselves to copying the prosecution's written submissions and using short, vague and stereotyped formulae for rejecting the applicant's complaints as unsubstantiated. In essence, the domestic courts limited their role to one of automatic endorsement of the prosecution's applications, and they cannot be considered to have conducted a genuine review of the "lawfulness" of the applicant's detention. That is contrary not only to the requirements of Article 5 § 4, but also to those of the domestic law as interpreted and clarified by the Plenum of the Supreme Court (see paragraphs 79-80 above).

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

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

145. The applicant complained under Article 18 of the Convention that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, his arrest and detention had had the purpose of punishing him as a government critic, silencing him as an NGO activist and human rights defender, discouraging others from such activities, and paralysing civil society in the country. 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."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

147. The applicant maintained that the restrictions in the present case had been applied with the intention of punishing and silencing him, thereby neutralising him as a human rights defender and preventing him from continuing human rights activities. He argued that the totality of the evidence in the present case was sufficient to rebut the general presumption that public authorities in member States had acted in good faith. The facts of the case demonstrated convincingly that the real aim of the authorities had not been the same as that proclaimed.

148. The applicant submitted that he was an outspoken critic of the government and that his activities had aimed to hold the government accountable for human rights violations and organise human rights campaigns calling for improvement of the general situation, in particular with regard to the defence of political prisoners' rights. His work had had a direct impact on the public, raising awareness of politically motivated prosecutions and exposing violations of fundamental freedoms such as freedom of expression, freedom of association, property rights and other issues directly affecting the public.

149. The applicant argued that the timing of his detention indicated that the detention had been linked not only to his general activities as a human rights defender, but also to his role as a keynote speaker at the PACE event on 24 June 2014, where he had spoken about human rights issues in Azerbaijan. Moreover, his detention and prosecution could not be viewed in isolation. It was part of a targeted repressive campaign against human rights defenders and NGOs, which included disparaging public statements by various high-ranking officials. The very public support from a number of State officials for his prosecution and the prosecution of others indicated that the measures taken by the authorities had political motives. State officials of the highest ranks persistently labelled all NGOs receiving grants from abroad as traitors and a "fifth column".

150. In this context, it was also important to consider that, before the wave of arrests of human rights defenders, a series of restrictive amendments to the NGO legislation had been adopted, *de facto* hindering the effective operation of NGOs in the country.

(b) The Government

151. The Government argued that, as in the applicants' allegations in *Khodorkovskiy v. Russia* (no. 5829/04, 31 May 2011) and *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, 25 July 2013), the applicant's allegations in the present case were too wide and far-reaching.

He did not complain of an isolated incident, but tried to demonstrate that the whole legal machinery of the respondent State had been misused *ab initio*, and that from beginning to end the authorities had been acting in bad faith and with blatant disregard for the Convention. In essence, the applicant tried to persuade the Court that everything in his case was contrary to the Convention, and that the criminal proceedings against him were therefore invalid. That allegation was a serious one, because it assailed the general presumption of good faith on the part of the public authorities and required particularly weighty evidence in support. None of the accusations against the applicant were political. He had not been an opposition leader or a public official. The acts which had been imputed to him were not related to his participation in political life, real or imaginary – he had been prosecuted for common criminal offences, such as tax evasion, fraud, and so on. The Government submitted that the restrictions imposed by the State in the present case pursuant to Article 5 of the Convention had not been applied for any purpose other than one envisaged by that provision, and strictly for the proper investigation of serious criminal offences allegedly committed by the applicant.

(c) The third parties

152. Submissions by the third parties, which pertain to both the complaints under Articles 5 and 18 of the Convention, are summarised in paragraphs 99-113 above.

2. The Court's assessment

153. The Court emphasises that Article 18 of the Convention does not have an autonomous role. It can only be applied in conjunction with other Articles of the Convention (see *Gusinskiy v. Russia*, no. 70276/01, § 75, ECHR 2004-IV). As the Court has previously held in its case-law, the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. Indeed, any public policy or individual measure may have a "hidden agenda", and the presumption of good faith is rebuttable. However, an applicant alleging that his rights and freedoms were limited for an improper reason must convincingly show that the real aim of the authorities was not the same as that proclaimed or which could be reasonably inferred from the context. A mere suspicion that the authorities used their powers for some other purpose than those defined in the Convention is not sufficient to prove that Article 18 was breached (see *Khodorkovskiy*, cited above, § 255).

154. When an allegation is made under Article 18 of the Convention the Court applies a very exacting standard of proof. As a consequence, there are only a few cases where a breach of that Convention provision has been found. Thus, in *Gusinskiy* (cited above, §§ 73-78), the Court accepted that the applicant's liberty had been restricted, *inter alia*, for a purpose other

than those mentioned in Article 5. It based its findings on a signed agreement between the detainee and a federal Minister for the Press, from which it was clear that the applicant's detention had been imposed in order to make him sell his media company to the State. In *Cebotari v. Moldova* (no. 35615/06, §§ 46 et seq., 13 November 2007) the Court found a violation of Article 18 of the Convention where the applicant's arrest was obviously linked to an application pending before the Court. In *Lutsenko v. Ukraine* (no. 6492/11, §§ 108-09, 3 July 2012) the prosecuting authorities seeking the applicant's arrest explicitly indicated that the applicant's communication with the media was one of the grounds for his arrest, such reasoning clearly demonstrating that his arrest was an attempt to punish him for publicly disagreeing with accusations against him. In *Tymoshenko v. Ukraine* (no. 49872/11, § 299, 30 April 2013) the reasoning formally advanced by the authorities suggested that the actual purpose of the detention was to punish the applicant for a lack of respect towards the court, which it was claimed she had been demonstrating by her behaviour during judicial proceedings. Furthermore, both the *Lutsenko* and *Tymoshenko* cases were similar in their circumstances, in that both applicants – who were former high-ranking government officials and leaders of opposition parties – were, soon after the change of power, accused of abuse of power, and the authorities' actions against them were considered by the public to be part of the politically motivated prosecution of opposition leaders in Ukraine. However, in both cases, the Court chose to look at the matter separately from the general context of the allegedly politically motivated prosecution, because in each case it was possible to discern other specific features (described above), which led to a finding of a breach of Article 18 (see *Lutsenko*, cited above, § 108, and *Tymoshenko*, cited above, §§ 296 and 298-99). In *Ilgar Mammadov* (cited above, §§ 142-43), the Court found that the standard of proof was satisfied because the combination of the relevant case-specific facts clearly demonstrated that the actual purpose of the measures taken by the authorities had been to silence or punish the applicant for criticising the government and attempting to disseminate what he believed was true information that the government were trying to hide.

155. The Court notes that the applicant's arrest and prosecution, together with the cases of other human rights defenders and government critics, has been the subject of heavy international criticism. However, the Court has previously stated that the political process and adjudicative process are fundamentally different, and therefore it must base its decision on "evidence in the legal sense" and its own assessment of the specific relevant facts (see, *mutatis mutandis*, *Khodorkovskiy*, cited above, § 259). It considers that the circumstances of the present case suggest that the applicant's arrest and detention had distinguishable features which allow the Court to analyse the situation independently of the various opinions voiced in connection with this case.

156. The Court has found above that the charges against the applicant were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention (contrast *Khodorkovskiy*, cited above, § 258, and compare *Lutsenko*, cited above, § 108, and *Ilgar Mammadov*, § 141). It has not been demonstrated that the facts held against the applicant could have given rise to legitimately serious criminal accusations or that the case against him had a "healthy core" (contrast *Khodorkovskiy and Lebedev*, cited above, § 908). As noted above, the applicant was charged with serious criminal offences whose core constituent elements could not reasonably be found on the existing facts.

157. Thus, the conclusion to be drawn from this finding is that the assumption that the authorities acted in good faith was undermined. However, that conclusion in itself is not sufficient to assume that Article 18 was breached, and it remains to be seen whether there is proof that the authorities' actions were actually driven by improper reasons.

158. The Court considers that, depending on the circumstances of the case, improper reasons cannot always be proven by pointing to a particularly inculpatory piece of evidence which clearly reveals an actual reason (for example, a written document, as in the case of *Gusinskiy*) or a specific isolated incident. In this case, as in *Ilgar Mammadov* (cited above), the Court considers that it can be established to a sufficient degree that proof of improper reasons follows the combination of relevant case-specific facts. In particular, the Court notes the following.

159. Firstly, the general circumstances to which it has had regard in connection with its assessment of the complaint under Article 5 § 1 (see paragraph 120 above) are equally relevant in the context of the present complaint. In the Court's view, the general context of the increasingly harsh and restrictive legislative regulation of NGO activity and funding cannot be simply ignored in a case like the present one, where such a situation has led to an NGO activist being prosecuted for an alleged failure to comply with legal formalities of an administrative nature while carrying out his work.

160. Secondly, the Court takes note of the numerous statements by high-ranking officials and articles published in the pro-government media, where local NGOs and their leaders, including the applicant, were consistently accused of being a "fifth column" for foreign interests, national traitors, foreign agents, and so on (see paragraphs 35-42 above). They were harshly criticised for contributing to a negative image of the country abroad by reporting on the human rights situation in the country. What was held against them in these statements was not simply an alleged breach of domestic legislation on NGOs and grants, but their activity itself.

161. Thirdly, the applicant's situation cannot be viewed in isolation. Several notable human rights activists who have cooperated with international organisations for the protection of human rights, including, most notably, the Council of Europe, were similarly arrested and charged

with serious criminal offences entailing heavy imprisonment sentences. These facts, taken together with the above-mentioned statements by the country's officials, support the applicant's and the third parties' argument that his arrest and detention were part of a larger campaign to "crack down on human rights defenders in Azerbaijan, which had intensified over the summer of 2014" (see paragraph 104 above).

162. The totality of the above circumstances indicates that the actual purpose of the impugned measures was to silence and punish the applicant for his activities in the area of human rights. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was imposed for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence, as prescribed by Article 5 § 1 (c) of the Convention.

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

IV. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

164. The applicant further complained under Article 11 that his right to freedom of association had been violated because his arrest and detention had been intended to silence him as an NGO activist. Article 11 of the Convention provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

A. The parties' submissions

1. The Government

165. As to the admissibility of the complaint, the Government argued that the applicant had failed to raise the issue of the alleged violation of his rights under Article 11 of the Convention before the domestic courts, and therefore that the complaint should be declared inadmissible for non-exhaustion of domestic remedies.

166. As to the merits of the complaint, the Government admitted that the applicant's arrest had been connected to his alleged illegal activities as a "member of an NGO", and that therefore there had been interference with the applicant's right as guaranteed under Article 11 of the Convention. However, such interference was prescribed by the relevant provisions of the Criminal Code; pursued the legitimate aims of public safety, prevention of disorder and protection of the rights of others; and was also necessary in a democratic society because financial and monetary policy was one of the main functions of the State, and NGO activities could not serve as a shelter for illegal financial flows and tax evasion.

2. The applicant

167. As to the admissibility of the complaint, the applicant submitted that, although he had not relied expressly on Article 11 of the Convention before the domestic courts, he had submitted in his appeals that his detention had amounted to a punishment for engaging in activities which were protected by the Constitution.

168. As to the merits of the complaint, the applicant argued that his detention constituted an interference with his rights under Article 11 § 1 of the Convention, and that this interference had not been justified under Article 11 § 2 of the Convention.

B. The Court's assessment

169. In respect of the Government's objection concerning non-exhaustion of domestic remedies, the Court notes the specific nature of the present complaint, where the applicant alleged that, in addition to being in breach of Articles 5 and 18 of the Convention, his detention had also amounted to a violation of Article 11 in the particular factual context of the case. The Court notes that the applicant had challenged the lawfulness and justification of his detention before the domestic courts and had exhausted the remedies available in that regard. The Government did not specify what other remedy had been available to the applicant capable of providing redress in respect of the matters complained of. For these reasons, the Court rejects the Government's objection and finds that this complaint is linked to those examined above and must therefore likewise be declared admissible.

170. However, having regard to its findings under Article 5 §§ 1 and 4 of the Convention and Article 18 of the Convention, as well as the fact that a separate application concerning the authorities' refusal to register the applicant's NGO is pending before the Court (application no. 27309/14), the Court considers that it is not necessary to examine whether there has been a violation of Article 11 of the Convention in this case.

V. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

171. In January 2015 the applicant introduced a new complaint, arguing that the suspension of his representative's licence to practise law and the impossibility of meeting his representative in the prison had amounted to a breach of his right of individual petition under Article 34 of the Convention, which reads:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

1. The applicant

172. The applicant maintained his complaint, pointing out that the suspension of his representative's licence to practise law had been politically motivated. The aim of the measure had been to silence Mr Bagirov as an independent advocate, and was part of a general campaign to crack down on civil society in the country.

173. The applicant also submitted that his representative had been refused permission to meet with him in the prison. The impossibility of meeting his representative had amounted to an infringement of the effective exercise of his right of individual petition under Article 34 of the Convention. The applicant also argued that his representative had submitted a valid authority form to the Court and to the domestic authorities.

2. The Government

174. The Government submitted that the applicant's right of individual petition under Article 34 had not been infringed. They pointed out that the suspension of the applicant's representative's licence to practise law had not related to any statements or submissions the representative had made within the present proceedings.

175. As regards the applicant's inability to meet his representative in prison, the Government submitted that the applicant's representative had failed to submit a valid authority form to the Court and to the prison authorities. They further submitted that the fact that the applicant's representative had been able to submit to the Court very detailed and lengthy observations should be taken into account when considering the applicant's allegation that his right of individual application had been breached. The Government lastly pointed out that, although Mr Bagirov's licence had been suspended on 10 December 2014, they had not objected to him representing the applicant before the Court. Therefore, this fact

confirmed that they had no intention of hindering the effective exercise of the applicant's right of individual petition under Article 34 of the Convention.

B. The Court's assessment

176. According to the Court's case-law, a complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Ergi v. Turkey*, 28 July 1998, § 105, *Reports* 1998-IV, and *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000).

177. It is of utmost importance for the effective operation of the system of individual petition guaranteed by Article 34 of the Convention that applicants or potential applicants should be able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints (see *Akdivar and Others v. Turkey*, 16 September 1996, § 105, *Reports* 1996-IV, and *Kurt v. Turkey*, 25 May 1998, § 159, *Reports* 1998-III). In this context, "any form of pressure" includes not only direct coercion and flagrant acts of intimidation, but also other improper indirect acts or communication designed to dissuade or discourage applicants from pursuing a Convention complaint, or having a "chilling effect" on the exercise of the right of individual petition of applicants and their representatives (see *Kurt*, cited above, §§ 160 and 164; *Tanrıkulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV; and *Fedotova v. Russia*, no. 73225/01, § 48, 13 April 2006).

178. The fact that an individual has managed to pursue his application does not prevent an issue arising under Article 34. Should a government's actions make it more difficult for an individual to exercise his right of petition, this amounts to "hindering" his rights under Article 34 (see *Akdivar and Others*, cited above, § 105). The intentions or reasons underlying the acts or omissions in question are of little relevance when assessing whether Article 34 of the Convention was complied with; what matters is whether the situation created as a result of the authorities' act or omission conforms to Article 34 (see *Paladi v. Moldova* [GC], no. 39806/05, § 87, 10 March 2009). Moreover, the Court must assess the vulnerability of the complainant and the risk of his being influenced by the authorities. An applicant's position might be particularly vulnerable when he is held in custody with limited contact with his family or the outside world (see *Cotleţ v. Romania*, no. 38565/97, § 71, 3 June 2003).

179. Turning to the circumstances of the present case, the Court observes at the outset that the applicant raised two complaints under Article 34 of the Convention. Firstly, he complained that the suspension of his legal representative's licence to practise had related to the latter's involvement in the protection of human rights as an independent advocate.

Secondly, he complained that the impossibility of meeting his representative in prison had amounted to a violation of the respondent State's obligation not to hinder the effective exercise of his right of individual petition. The Court will examine the latter complaint first.

180. In the present case it is not in dispute that, following the suspension of his licence to practise law on 10 December 2014, Mr Bagirov was refused permission to meet with the applicant. In this connection, the Court observes at the outset that, although the Government argued that Mr Bagirov had failed to present a valid authority form to the Court and the domestic authorities, it is apparent from the documents in the case file that on 8 October 2014 the applicant signed the authority form as part of the application form, a copy of which was transmitted to the Government by the Court when the present application was communicated. As regards Mr Bagirov's alleged failure to submit a valid power of attorney to the domestic authorities, the Court observes that when the domestic authorities refused him permission to meet with the applicant they relied not on the absence of his power of attorney, but on the suspension of his licence to practise law of 10 December 2014 (see paragraph 49 above).

181. Therefore, the issue before the Court is whether the impediments to communication between the applicant and his representative put in place by the prison authorities on the grounds that Mr Bagirov's licence to practise had been suspended amounted to a violation of the respondent State's obligation not to hinder the effective exercise of the right of petition under Article 34 of the Convention.

182. In this connection, the Court observes that in the past it has found violations of the right of petition under Article 34 of the Convention in circumstances where an applicant in detention had been prevented from communicating freely with his representative before the Court. In particular, the Court considered that Article 34 of the Convention had been breached where: an applicant had been unable to discuss issues concerning an application before the Court with his representative without their being separated by a glass partition (see *Cebotari*, cited above, §§ 58-68, 13 November 2007); an applicant had been unable to communicate with his representative before the Court during his treatment in hospital (see *Shtukaturov v. Russia*, no. 44009/05, § 140, ECHR 2008); and where an applicant's contact with his representative before the Court had been restricted on the grounds that the representative was not a professional advocate and did not belong to any Bar association (see *Zakharkin v. Russia*, no. 1555/04, §§ 152-60, 10 June 2010). The Court has, however, accepted that compliance by a representative with certain formal requirements might be necessary before obtaining access to a detainee, for instance for security reasons or in order to prevent collusion or some action to pervert the course of the investigation or justice (see *Melnikov v. Russia*, no. 23610/03, § 96, 14 January 2010). At the same time, excessive

formalities in such matters, such as those that could *de facto* prevent a prospective applicant from effectively enjoying his right of individual petition, have been found to be unacceptable. By contrast, where the domestic formalities were easy to comply with, no issue arose under Article 34 (see *Lebedev v. Russia*, no. 4493/04, § 119, 25 October 2007).

183. The Court observes that, in the present case, although it was clear that Mr Bagirov's request for a meeting with the applicant related to the applicant's pending case before the Court (see paragraph 47 above), the domestic authorities did not allow such a meeting. The only reason given for refusing to allow the applicant's representative to meet him was that his licence to practise law had been suspended on 10 December 2014 (see paragraph 49 above). However, the Court notes that the suspension of Mr Bagirov's licence, which under domestic law prevented him from representing applicants in domestic criminal proceedings, could not be interpreted as a measure limiting his rights in the representation of applicants before the Court. Given that permission to represent an applicant may be granted to a non-advocate under Rule 36 § 4 (a) of the Rules of Court, Contracting States must ensure that non-advocate representatives are allowed to visit detainees who have lodged or intend to lodge an application with the Court under the same conditions as advocates (see *Zakharkin*, cited above, § 157).

184. The Court further observes that, although the domestic law does not provide for any special rules regarding detainees receiving visits from their representatives before the Court, it does not limit such visits to only those from professional advocates belonging to the Bar Association. In particular, the applicable domestic law specifically provides that detainees also have the right to meet with persons other than advocates who are authorised to provide them with legal assistance (see paragraph 77 above).

185. As regards the Government's argument that the applicant's representative was able to submit to the Court very detailed and lengthy observations, and that this fact should be taken into account when considering the complaint, the Court notes that a failure by the respondent Government to comply with their procedural obligation under Article 34 of the Convention does not necessarily require that the alleged interference should have actually restricted, or had any appreciable impact on, the exercise of the right of individual petition. The Contracting Party's procedural obligations under Articles 34 and 38 of the Convention must be enforced irrespective of the eventual outcome of the proceedings, and in such a manner as to avoid any actual or potential chilling effect on the applicants or their representatives (see *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, § 209, ECHR 2013).

186. In view of the foregoing, the Court considers that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

187. Having reached that conclusion, and in order to avoid prejudging any issues which might be raised in application no. 28198/15 lodged by Mr Bagirov himself concerning the suspension of his licence to practice law, the Court considers that it is not necessary to further examine the applicant's argument that the suspension of Mr Bagirov's licence was part of a general crackdown campaign against human rights lawyers and activists.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

188. 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

189. The applicant claimed 10,000 euros (EUR) in respect of lost earnings from three projects funded by grants received just before his arrest, and AZN 2,274.61 for expenses borne by his family to buy food parcels for him while in detention.

190. The applicant further claimed EUR 20,000 in respect of non-pecuniary damage caused by serious mental suffering attributable to the arbitrary and unlawful conduct of the domestic authorities.

191. The Government contested the claim in respect of pecuniary damage as unsubstantiated and lacking a causal link with the alleged violations. They also contested the claim in respect of non-pecuniary damage, noting that an element of suffering was inevitably associated with deprivation of liberty.

192. As to the part of the claim concerning expenses relating to the food parcels, the Court does not discern any causal link between the violations found and the damage alleged; it therefore rejects this part of the claim.

193. As to the part of the claim concerning the loss of earnings, the Court notes that the applicant submitted a number of documents in support of this part of the claim. However, the information and material submitted are not sufficient for precise calculation of the various components of the alleged damage. Nevertheless, based on that material, the Court accepts that the applicant did suffer, on account of his unjustified detention, a loss of opportunities, which justifies an award of just satisfaction in the present case (compare, *mutatis mutandis*, *Lechner and Hess v. Austria*, 23 April 1987, § 64, Series A no. 118; *Martins Moreira v. Portugal*, 26 October 1988, §§ 65-67, Series A no. 143; and *Schüth v. Germany* (just satisfaction), no. 1620/03, §§ 23-24, 28 June 2012).

194. The Court further considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations, and that compensation must therefore be awarded.

195. As the above-mentioned factors do not lend themselves to precise quantification, the Court has assessed both claims as a whole and, as required by Article 41, on an equitable basis. It awards the applicant the global sum of EUR 25,000 in respect of both pecuniary and non-pecuniary damage.

B. Costs and expenses

196. The applicant also claimed AZN 1,400 for legal fees incurred before the domestic courts, EUR 5,000 for legal fees incurred before the Court (including EUR 3,000 for Mr K. Bagirov's legal services and EUR 2,000 for Ms R. Remezaite's legal services), AZN 381.9 for notary fees and postal expenses, and EUR 1,273 for translation costs.

197. The Government argued that the claims in respect of legal fees had not been properly substantiated by relevant supporting documents and were excessive. They further argued that the documents submitted in support of the claim in respect of translation costs were not credible.

198. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the claim in respect of notary fees and postal fees for lack of proper substantiation and itemisation, and considers it reasonable to award the sum of EUR 1,175 in respect of legal fees incurred before the domestic courts, and the full amounts claimed in respect of legal fees incurred before the Court and translation costs. Accordingly, the Court awards the total sum of EUR 7,448 to cover costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

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

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

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

6. *Holds* that there is no need to examine the complaint under Article 11 of the Convention;

7. *Holds* that the respondent Government has failed to comply with their obligations under Article 34 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani new manats at the rate applicable at the date of settlement:
      (i) EUR 25,000 (twenty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 7,448 (seven thousand four hundred and forty-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 17 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President