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La Corte Edu sulla mancanza del "ragionevole sospetto"
(CEDU, sez. I, sent. 2 marzo 2023, ric. n. 6180/15)

Con la decisione in esame pronunciata contro l'Azerbaigian, la Corte di Strasburgo ha esaminato le doglianze sostenute dal ricorrente, attivista politico e membro del movimento civico NIDA, circa l'asserita violazione dell'art. 5 della CEDU.
In particolare, il ricorrente lamentava di essere stato arrestato per avere partecipato ad una manifestazione e di essere stato condannato alla pena della detenzione ma che tali misure non fossero basate su un ragionevole sospetto circa la sua colpevolezza e che non fossero state fornite ragioni sufficienti e pertinenti per giustificare la detenzione.
A tal riguardo, la Corte precisa anzitutto come già in una serie di cause promosse contro l'Azerbaigian relative allo stesso periodo della causa in oggetto, essa aveva riscontrato che il vero scopo degli arresti e delle detenzioni era quello di mettere a tacere e punire i ricorrenti per le loro critiche contro il governo, per il loro attivo impegno sociale e politico e per impedire loro di continuare tali attività, specie se si trattava di membri del gruppo NIDA.
Nel caso di specie, i giudici di Strasburgo, tenuto conto di alcuni elementi quali la tempistica dell'arresto e dell'avvio del procedimento penale contro il ricorrente, le modalità di svolgimento delle indagini e il comportamento osservato dalle autorità, hanno ritenuto il mancato soddisfacimento dello standard minimo stabilito dall'art. 5 CEDU per l'arresto e il proseguimento della detenzione di un individuo. In altre parole, non è stato dimostrato in modo soddisfacente che il ricorrente sia stato privato della libertà per il "ragionevole sospetto" di aver commesso un reato.
Per questi motivi, la Corte ha dichiarato la fondatezza del ricorso.

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

FIRST SECTION

CASE OF XXX v. AZERBAIJAN
(Application no. 6180/15)

JUDGMENT
STRASBOURG

2 March 2023

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 XXX v. Azerbaijan,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Marko Bošnjak, *President*,
Péter Paczolay,
Alena Poláčková,
Lətif Hüseynov,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato, *judges*,
and Renata Degener, *Section Registrar*,
Having regard to:
the application (no. 6180/15) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr XXX – ("the applicant"), on 6 December 2014;
the decision to give notice to the Azerbaijani Government ("the Government") of the application;
the parties' observations;
Having deliberated in private on 13 February 2023,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The present case concerns the arrest and pre-trial detention of the applicant, an opposition activist. He complained that his arrest and detention had not been based on a reasonable suspicion that he had committed a criminal offence and that sufficient and relevant reasons had not been given for his continued detention, in breach of Article 5 of the Convention. He also complained that his right to liberty had been restricted for purposes other than those prescribed by the Convention, in breach of Article 18 of the Convention taken in conjunction with Article 5 § 1.

THE FACTS

2. The applicant was born in XXX and, at the material time, lived in XXX. He was represented before the Court by Mr R. Mustafazade and Mr A. Mustafayev, lawyers based in Azerbaijan.
3. The Government were represented by their Agent, Mr Ç. Əsgərov.
4. The facts of the case may be summarised as follows.

I.BACKGROUND TO THE CASE

5. At the material time the applicant was a member of the civic movement NIDA – an organisation established by a group of young people in February 2011 – and was active on social media platforms writing posts criticising the government.

A. The applicant's participation in a protest on 29 December 2013

6. The applicant was involved in several peaceful protests as an organiser and/or participant. In particular, he organised an unauthorised demonstration on 29 December 2013 in which people protested against bureaucratic injustices which had allegedly driven a disabled war veteran to set himself on fire. For his participation in that demonstration, the applicant was convicted on 30 December 2013 and sentenced to eighteen days of administrative detention. He served his sentence at the Ministry of Internal Affairs' unit for persons in administrative detention ("the detention unit"). He was released on 16 January 2014.

7. On several occasions during his detention, the applicant was handcuffed for allegedly breaching the disciplinary rules.

8. According to the applicant, the administration of the detention unit was biased against detainees who had participated in anti-government demonstrations and those detainees, including the applicant himself, were therefore regularly ill-treated by officers of the detention unit.

9. News reports about the above-mentioned alleged ill-treatment of the applicant and other detainees were published in various media outlets. For example, an article published on 3 January 2014 in *Yeni Musavat* reported that, according to another detainee, T.S., he and other activists convicted for participating in the demonstration of 29 December 2013 and detained at the detention unit had started a hunger strike because, *inter alia*, the applicant had been ill-treated and handcuffed to a non-functioning radiator in a cold cell with broken windows. An article published on 16 January 2014 in *Yeni Musavat* reported that the applicant had stated in an interview that on his first day at the detention unit he had been handcuffed and beaten for failing to say hello to a plain-clothed chief of the institution and that he had been punished by being handcuffed for two hours a day for four days. He had been handcuffed to a cold radiator for six days after having demanded the provision of a notice board listing his rights as a detainee. He had subsequently been beaten again for protesting against an order to clean the yard of the institution.

B. The applicant's participation in a protest on 6 May 2014

10. In March and April 2013 a number of NIDA members were arrested and later charged with various criminal offences. Many of these arrests and pre-trial detentions have been the subject of judgments of the Court (see *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, 7 June 2018; *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, 18 February 2021; and *Haziyev and Others v. Azerbaijan* [Committee], nos. 3650/12 and 4 others, 5 November 2020).

11. The trial of the above-mentioned NIDA members took place between November 2013 and May 2014 at the Baku Assize Court. During that period, people attended the hearings or gathered near the court building owing to lack of space in the courtroom in order to show their support for the defendants. When the Baku Assize Court delivered its judgment on 6 May 2014, the applicant was among the people who had gathered near the court building. He participated in a spontaneous protest against that judgment. Shortly after it had started, the demonstration was dispersed by the police and the applicant was arrested together with other people.

12. For his participation in that demonstration the applicant was convicted on 7 May 2014 and sentenced to twenty days of administrative detention (see *Khalilova and Ayyubzade v. Azerbaijan* [Committee], nos. 65910/14 and 73587/14, 6 April 2017, where the Court found violations of Articles 11 and 6 on account of the applicant's arrest and conviction). He served his sentence at the above-mentioned detention unit.

II.CRIMINAL PROCEEDINGS AGAINST THE APPLICANT AND HIS PRE-TRIAL DETENTION

13. On 15 May 2014 the applicant was handcuffed for allegedly breaching the disciplinary rules of the detention unit.

14. According to a record (*akt*) drawn up on the same day by the detention unit's officers A.A., A.G. and E.A., the applicant was handcuffed for two hours at 11 a.m. on 15 May 2014 "for breaching disciplinary rules – in particular speaking loudly, making noise, arguing with other detainees, not addressing the employees of the detention unit in accordance with their rank and not obeying their lawful demands".

15. According to the applicant, on 15 May 2014 he had demanded that the police officers allow him to use his right to make a telephone call. In response, the officers had ill-treated him and taken him to one of the detention unit's office rooms, handcuffed him and forcibly stripped him naked. He had been beaten and threatened with rape and then placed in solitary confinement while handcuffed.

16. The applicant's above-mentioned sentence (see paragraph 12 above) was due to expire on 26 May 2014, when he was supposed to be released from the detention unit. However, on that day the applicant was instead escorted by the police to the Binagadi District Prosecutor's Office, where he was formally arrested (*tutma*) as a suspect and later charged with an offence under Article 315.1 of the Criminal Code (resistance to or violence against a public official).

17. The Binagadi District Prosecutor's decision of 26 May 2014 stated the following grounds for instituting criminal proceedings:

"[According to] information received from the Binagadi District Police Office on 19 May 2014, ... at around 10.50 a.m. on 15 May 2014 the applicant failed to comply with lawful orders by officers E.A., A.G. and A.A. in connection with their duties concerning [the applicant's] breach of the detention unit's disciplinary rules [and the applicant] offered resistance to E.A. and A.G. in the form of violence not endangering [those officers'] life or health."

18. When questioned by an investigator in charge of the case, the applicant gave the same account of the events as that summarised in paragraph 15 above and stated that several detainees had witnessed the incident. The applicant also asked the investigator to obtain and examine video recordings made on the day of the incident by the surveillance cameras installed at the detention unit and stated that he was ready to submit in evidence his torn underwear. He also alleged that he and other detained participants had been ill-treated at the same detention unit during their detention following their participation in the demonstration of 29 December 2013 and that the ill-treatment had been reported in various media outlets.

19. On 27 May 2014 the prosecutor requested the Binagadi District Court to impose on the applicant the preventive measure of remand in custody, referring to the same grounds as those summarised in paragraph 17 above and also to the gravity of the charges against him, the threat he posed to the public, and the likelihood that if released, he might obstruct the investigation. On the same day, the Binagadi District Court, granting the prosecutor's request, ordered the applicant's detention for a period of one month. The court justified the applicant's pre-trial detention on largely the same grounds on which the prosecutor had based his request. The court also stated that according to records (*aktlar*) drawn up by the forensic medical expert agency, "non-classifiable" injuries not causing damage to health had been found on officers E.A. and A.G.

20. On 29 May 2014 the applicant appealed against that decision, arguing that his detention had been unlawful and unjustified. He asserted, *inter alia*, that there had been no reasonable suspicion that he had committed a criminal offence. Referring to the statements (see paragraph 18 above) he had given to the investigator, the applicant argued that the evidence submitted by the prosecution was unreliable because it consisted only of the testimonies of the police officers who had incriminated him in order to cover up their own unlawful actions – namely his ill-treatment. The applicant further argued that his allegations of ill-treatment had been corroborated by a medical record drawn up by the forensic medical expert agency, according to which injuries had been found on him. He also complained that the detention unit had failed to provide video-recordings from the surveillance cameras.

21. On 10 June 2014 the Baku Court of Appeal dismissed the applicant's appeal and upheld the first-instance court's decision. The appellate court referred to the gravity of the charges against him, the threat he posed to the public, and the likelihood that if released, he might abscond and obstruct the investigation.

22. On an unspecified date the applicant requested that the investigator obtain and examine recordings from the surveillance cameras installed at the detention unit. That request was granted by the investigator. By a letter of 14 June 2014 addressed to the prosecutor, the chief of the detention unit, R.I., alleged that "the video surveillance devices have been temporarily removed from the cells of the detention unit ... on account of renovation works, [and that in any event] ... those devices have no memory storage systems".

III. EXTENSION OF THE PRE-TRIAL DETENTION

23. Following a request by the prosecutor, on 24 June 2014 the Binagadi District Court extended the applicant's detention pending trial by one month, until 26 July 2014. The court cited the threat to the public, and the likelihood that if released, he might obstruct the investigation.

24. The applicant appealed, arguing that the prosecution had not submitted any evidence in support of the request and had used stereotypical expressions and that the Binagadi District Court had failed to justify the extension of his pre-trial detention.

25. On 30 June 2014 the Baku Court of Appeal dismissed the applicant's appeal and upheld the first-instance court's decision.

26. On 3 July 2014 the applicant submitted a request to the Binagadi District Court to be placed under house arrest rather than in pre-trial detention. He asserted, in particular, that there was no risk of his obstructing the investigation (in particular because the witnesses against him were police officers, most of the investigative measures had already been carried out and he had been accused of a criminal offence belonging to a "less serious" category) and argued that his personal situation – in view of the fact that he had a permanent place of residence, was a young student, was dependent on the financial support of his family and was seriously ill – had to be taken into consideration.

27. On 5 July 2014 the Binagadi District Court dismissed that request. The applicant appealed, reiterating his arguments. On 15 July 2014 the Baku Court of Appeal upheld the first-instance court's decision, without addressing any of the applicant's specific arguments.

IV. FURTHER DEVELOPMENTS

28. On 26 July 2014 the applicant's pre-trial detention, extended by the Binagadi District Court, expired. However, he continued to be kept in detention.

29. In August 2014 the applicant's trial in the Binagadi District Court began.
30. During a preparatory hearing on 11 August 2014, the applicant requested the court to, *inter alia*, find that his detention during the period from 26 July to 11 August 2014, in the absence of a relevant court decision, had been in breach of his right to liberty and security; he also requested the court to change his detention to house arrest.
31. The Binagadi District Court dismissed those requests.
32. On 15 October 2014 the Binagadi District Court convicted the applicant as charged and sentenced him to two years' imprisonment. That judgment was upheld by the higher courts (the court proceedings against the applicant are the subject of application no. 31384/16, which is pending before the Court).
33. The applicant was released from serving the remainder of his sentence by a presidential pardon granted on 18 March 2015.
RELEVANT LEGAL FRAMEWORK
34. A detailed description of the relevant provisions of the Code of Criminal Procedure 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).
35. The relevant part of Article 315 of the Criminal Code provided as follows at the material time:
Article 315. Resistance to or violence against a public official
"315.1. The use of violence against or violent resistance to a public official in connection with the exercise of the latter's official duties ... shall be punishable by deprivation of liberty for a period of up to three years."
36. Several relevant international documents are cited in the Court's judgment in *Rashad Hasanov and Others* (cited above, §§ 79-81).

THE LAW

I.ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION
37. The applicant complained under Article 5 § 1 of the Convention that his arrest and detention had not been based on a reasonable suspicion that he had committed a criminal offence and that sufficient and relevant reasons had not been given for his continued detention. The Court considers that the latter complaint falls to be examined under Article 5 § 3 of the Convention. The relevant parts of Article 5 of the Convention read as follows:
"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
...
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial."

A. Admissibility

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

B. Merits

1. The parties' submissions

39. The applicant submitted that he had been accused of a criminal offence in order to cover up the ill-treatment to which he had been subjected at the detention unit, to forestall his complaint against the officers who had inflicted that ill-treatment and to retaliate against him for his opposition views and civil activism. He argued that it was not a coincidence that the criminal proceedings against him had been instituted on the very day on which he was to be released on account of the expiry of his administrative detention. The applicant also argued that in instituting criminal proceedings against him, the prosecution had relied only on the testimony of the police officers and had ignored evidence in support of his allegations of ill-treatment, including his torn underwear and statements from witnesses who had been present during the incident and could have testified in the applicant's favour.

40. Furthermore, the applicant argued that the prosecution had not submitted any evidence to prove the need for his continued detention and that both the prosecution and the domestic courts had used stereotypical expressions to justify his continued detention.

41. The Government argued that the decision of 27 May 2014 of the Binagadi District Court, examining the lawfulness of the applicant's arrest and detention, had been based on preliminary evidence submitted by the prosecution giving rise to a reasonable suspicion against the applicant, and that the decision had also given relevant and sufficient grounds for applying the preventive measure of remand in custody, including the gravity of the charges and the risk of the applicant's absconding from the investigation.

2. The Court's assessment

42. The general principles relevant to the present complaints are set out in, among other authorities, *Rashad Hasanov and Others v. Azerbaijan* (nos. 48653/13 and 3 others, §§ 91-96, 7 June 2018).

43. The Court's task is to determine whether there existed in the present case sufficient objective elements that could lead an objective observer to reasonably believe that the applicant might have committed the acts alleged by the prosecuting authorities.

44. For that, it is necessary to closely scrutinise the investigative measures carried out against the applicant and the evidence collected by the authorities. It is also necessary, having regard to the seriousness of the allegations made by the applicant, to take into account the general context surrounding the case, the background information about the applicant and the sequence of events leading up to his arrest (for the similar approach, see, among other authorities, *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 120, 17 March 2016; *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, §§ 114-15, 13 February 2020; and *Myasnik Malkhasyan v. Armenia*, no. 49020/08, § 70, 15 October 2020).

45. In connection with the investigative measures and the evidence, the Court observes that the records issued and the requests submitted by the prosecution (see paragraphs 17 and 19 above) referred to "information" received from the Binagadi District Police Office on 19 May 2014 stating that the applicant had "failed to comply with lawful orders" by the police officers and had "[offered resistance] in the form of violence not endangering [those officers'] life or health". It appears that the "information" in question consisted of the police officers' complaint against the applicant. Furthermore, it appears that the criminal case file contained medical records stating that "non-classifiable" injuries – that is, less serious than "minor" injuries – had been identified on the alleged victims even though the above-mentioned records and requests did not mention those medical records and the Binagadi District Court's decision ordering the applicant's detention did not contain any specific details about those alleged injuries (see paragraph 19 above). The above-mentioned "information" and medical records, none of which were submitted to the Court, constituted the entire evidential basis for the applicant's arrest.

46. The Court also observes that the applicant gave a different version of the incident in question before both the prosecution and the Binagadi District Court, and alleged that, when he had demanded to exercise his right to a telephone call, he had been ill-treated by the police officers, who had then accused him of disobedience and violent resistance. The applicant referred to specific evidence which, he maintained, could confirm his allegations – namely statements of the detainees who had allegedly witnessed the incident, the medical record showing that he had been injured, his torn underwear and the contextual evidence demonstrating that he had also been ill-treated in the same detention unit during his earlier detention (see paragraphs 18 and 20 above). He also indicated that the incident in question could have been recorded by the surveillance cameras installed at the detention unit (ibid.). However, there is nothing in the material submitted to the Court to demonstrate that before arresting the applicant and charging him the domestic authorities had taken any steps to test his allegations, despite their seriousness (compare *Ibrahimov and Mammadov*, cited above, § 130). It appears that the only thing that the prosecution did in that connection was to request recordings from the surveillance cameras and to content itself with the answer given by the chief of the detention unit that the surveillance cameras installed in the cells had no memory storage systems (see paragraph 22 above).

47. The circumstances described above demonstrate that the domestic authorities accepted the police officers' version of the events at face value and dismissed the applicant's version without any serious attempt to verify it. The manner in which the entirety of the evidence in the present case was handled casts doubt on the reliability and accuracy of the evidence collected by the prosecution against the applicant.

48. Turning to the general context surrounding the case, the Court points out that in a number of cases against Azerbaijan relating to the same period as the present case, it has found that the actual purpose of the arrests and detentions was to silence and punish the applicants for their criticism against the government and for their active social, political or human rights engagement and to prevent them from continuing those activities (see, in the context of Article 18 of the Convention taken in conjunction with Article 5, *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, §§ 140-43, 22 May 2014; *Rasul Jafarov*, cited above, §§ 155-62; *Mammadli v. Azerbaijan*, no. 47145/14, §§ 99-104, 19 April 2018; *Rashad Hasanov and Others*, cited above, §§ 122-25; *Aliyev v. Azerbaijan*,

nos. 68762/14 and 71200/14, §§ 208-15, 20 September 2018; and *Ibrahimov and Mammadov*, cited above, §§ 153-57; see also, in the context of Article 11 of the Convention, *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, §§ 88-98, 11 February 2016).

49. In *Aliyev* (cited above, § 223), the Court found that its judgments in a series of similar cases reflected a pattern of arbitrary arrests and detentions of government critics, civil society activists and human rights defenders through retaliatory prosecutions and misuse of the criminal law in defiance of the rule of law.

50. Furthermore, in a series of cases specifically concerning NIDA, the Court has established that the authorities clearly targeted this organisation and its members (see *Ibrahimov and Mammadov*, cited above, § 155; *Rashad Hasanov and Others*, cited above, §§ 122-23; *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, § 71, 18 February 2021; and *Hasanov and Majidli v. Azerbaijan*, nos. 9626/14 and 9717/14, § 66, 7 October 2021).

51. Taking into account the above-mentioned general context, the Court emphasises that the applicant in the present case was known to be a member of NIDA; he was also known for his criticism of the government on social media platforms and for organising and participating in anti-government demonstrations. This background information is highly relevant to the present case.

52. As to the sequence of events, the Court notes that the timing of the applicant's arrest and the institution of the criminal proceedings against him was dubious, having occurred on 26 May 2014 – the very day when the applicant was supposed to have been released from detention. Furthermore, the criminal investigation into the applicant's alleged offence was not initiated promptly following the events but was instituted only ten days later.

53. Having regard to the elements analysed above and the inferences which may be drawn therefrom, in particular as regards the applicant's status, the questionable sequence of the events, the manner in which the investigation was carried out and the authorities' conduct, the Court finds that the material before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention. Accordingly, it has not been demonstrated in a satisfactory manner that at the point when the applicant's detention was ordered and during the whole period under the Court's consideration in the present case the applicant was deprived of his liberty on "reasonable suspicion" of having committed a criminal offence.

54. The Court also concludes that the proceedings against the applicant followed the same pattern as the proceedings against other government critics and those engaged in social, political or human rights activism.

55. The Court is mindful of the fact that the applicant's case went to trial and he was convicted. That, however, does not affect the Court's findings in connection with the present complaint.

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

57. Having regard to the above finding, the Court does not consider it necessary to examine separately under Article 5 § 3 of the Convention whether the domestic authorities provided relevant and sufficient reasons justifying the need for the applicant's continued pre-trial detention (for the same approach see, among other authorities, *Rustamzade v. Azerbaijan*, no. 38239/16, § 55, 7 March 2019).

II. ALLEGED VIOLATION OF ARTICLE 18 TAKEN IN CONJUNCTION WITH ARTICLE 5 § 1 OF THE CONVENTION

58. The applicant complained under Article 18 of the Convention taken in conjunction with Article 5 § 1 that his right to liberty had been restricted for purposes other than those prescribed by the Convention. He argued, on the basis of his earlier submissions, that the real purpose of his arrest and detention had been to punish him for his opposition views and civil activism. Article 18 of the Convention reads as follows:

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

59. The Government argued that the applicant had not raised this complaint before the domestic courts and that it was therefore inadmissible for non-exhaustion of domestic remedies. As to the merits of the complaint, the Government argued that the accusation against the applicant had not concerned his political activities and he was not an opposition leader or public official. He had been prosecuted for a common criminal offence and the measures applied to him had been aimed at ensuring the proper conduct of the investigation into that offence.

60. Having regard to the submissions of the parties and the Court's findings under Article 5 § 1 of the Convention regarding the general context surrounding the case (see in particular paragraphs 53-54 above), the Court considers that there is no need to give a separate ruling on the admissibility and merits of the present complaint (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014; *Haziyev v. Azerbaijan*, no. 19842/15, § 44, 6 December 2018; and *Atilla Taş v. Turkey*, no. 72/17, § 196, 19 January 2021).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 25,000 euros (EUR) in total in respect of pecuniary and non-pecuniary damage.

63. The Government argued that the applicant's claims in respect of pecuniary and non-pecuniary damage were unsubstantiated, as he had failed to submit any evidence, and in any event excessive. Furthermore, the applicant had not specified which part of the total amount of his claim related to pecuniary damage and which part to non-pecuniary damage.

64. The Government also argued that the finding of a violation of the Convention would in itself constitute sufficient just satisfaction for any non-pecuniary damage.

65. The Court considers that the applicant failed to substantiate his claim concerning the pecuniary damage alleged; it therefore rejects this claim. However, ruling on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

66. The applicant also claimed EUR 7,600 for the costs and expenses incurred before the domestic courts and before the Court.

67. In support of his claim, the applicant submitted a contract and an addendum (*akt*) to it signed by him and his representative, Mr R. Mustafazade. According to those documents, the applicant was to pay to Mr R. Mustafazade EUR 1,800 for legal services in the domestic proceedings and EUR 2,200 for legal services in the proceedings before the Court. The contract provided that those sums were to be paid by the applicant in the event that the Court awarded him compensation. The applicant also submitted a receipt according to which he had paid 200 Azerbaijani manats (equivalent to approximately EUR 200 at the material time) for legal services provided by his other representative, Mr A. Mustafayev. The applicant also argued that in addition to the above-mentioned legal services, he was to reimburse Mr A. Mustafayev for various costs which the latter had borne in connection with his visits to the applicant in the detention facility.

68. The Government argued that the claim was unsubstantiated and excessive, in particular because the applicant's representative, Mr R. Mustafazade, had not been the applicant's lawyer in the domestic proceedings. Furthermore, the applicant had not submitted to the Court any evidence of actual payment to his representative of the sum claimed.

69. The Government asked the Court to reject the applicant's claim in respect of the costs and expenses.

70. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 in respect of the legal services rendered by Mr R. Mustafazade, plus any tax that may be chargeable to the applicant, to be paid directly into the bank account of the applicant's representative. The Court also considers it reasonable to award the sum of EUR 200 to the applicant in respect of the legal services rendered by Mr A. Mustafayev, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning Article 5 §§ 1 and 3 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 merits of the complaint under Article 5 § 3 of the Convention;
4. *Holds* that there is no need to examine the admissibility and merits of the complaint under Article 18 of the Convention taken in conjunction with Article 5 § 1;
5. *Holds*

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

(i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of the legal services rendered by Mr R. Mustafazade, to be paid directly into the bank account of this representative;
(iii) EUR 200 (two hundred euros), plus any tax that may be chargeable to the applicant, in respect of the legal services rendered by Mr A. Mustafayev;
(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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.
Done in English, and notified in writing on 2 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar
Marko Bošnjak President