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La CEDU su restrizioni di diritti e libertà per scopi non autorizzati
(CEDU, sez. V, sent. 18 febbraio 2020, ric. nn. 65583/13, 70106/13)

La Corte Edu si pronuncia sul caso di due ricorrenti, membri di un'organizzazione giovanile non governativa (NIDA), i quali lamentavano di aver subito restrizioni della libertà personale a causa della partecipazione a manifestazioni pacifiche antigovernative riguardanti la morte di soldati dell'esercito in situazioni non belliche. Invero, dopo tale partecipazione ed il giorno prima di un'altra manifestazione programmata, i ricorrenti, a seguito di perquisizioni nei loro appartamenti, erano stati arrestati con l'accusa di possesso illegale di sostanze stupefacenti e molotov. La custodia cautelare era stata poi prolungata a seguito di una serie di decisioni dei tribunali nazionali non adeguatamente motivate. Inutili le richieste di arresti domiciliari alternativi, tutte respinte, cui sono seguite ulteriori accuse penali.

I due ricorrenti hanno adito la Corte Edu denunciando la violazione dell'articolo 5 § 3 della Convenzione (in quanto i tribunali nazionali non erano riusciti a giustificare la loro detenzione continuata in attesa del processo, non sussistendo ragioni pertinenti e sufficienti a tal fine), nonché dell'articolo 18 della Convenzione (asserendo che i loro diritti riconosciuti dalla Convenzione erano stati limitati per scopi diversi da quelli in essa previsti, trattandosi di un caso di detenzione preventiva finalizzata a punire e mettere a tacere attivisti dell'opposizione a causa del loro coinvolgimento attivo in manifestazioni antigovernative).

I Giudici di Strasburgo hanno ravvisato elementi sufficienti per ritenere che, effettivamente, le restrizioni della libertà dei ricorrenti fossero state disposte con finalità punitive per la partecipazione a tali manifestazioni, nonché impeditive dell'organizzazione di ulteriori dimostrazioni, in violazione dell'art.5 della Convenzione (Diritto alla libertà e alla sicurezza), anche in combinato disposto con l'art.18, ai sensi del quale le restrizioni che, in base alla Convenzione, sono poste a diritti e libertà possono essere applicate solo allo scopo per cui sono state previste.

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

FIFTH SECTION

CASE OF XXXXX AND XXXXX v. AZERBAIJAN

(*Applications nos. 65583/13 and 70106/13*)

JUDGMENT

STRASBOURG

18 February 2021

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

In the case of XXXXX and XXXXX v. Azerbaijan,

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

Síofra O'Leary, *President*,

Ganna Yudkivska,

Stéphanie Mourou-Vikström,

Lətif Hüseynov,

Lado Chanturia,

Ivana Jelić,

Arnfinn Bårdsen, *judges*,

and Victor Soloveytchik, *Section Registrar*,

Having regard to:

the applications (nos. 65583/13 and 70106/13) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Azerbaijani nationals, Mr XXXXX (XXXXX– "the first applicant") and XXXXX (XXXXX – "the second applicant") ("the applicants"), on 27 September and 17 October 2013, respectively;

the decisions to give notice to the Azerbaijani Government ("the Government") of the complaint concerning the alleged lack of justification for the applicants' pre-trial detention (Article 5 § 3 of the Convention) and, ex officio, an issue under Article 18 of the Convention, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 13 October 2020 and 26 January 2021,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. Relying on Article 5 § 3 of the Convention, the applicants allege that the domestic courts failed to justify their detention pending trial and that there were no relevant and sufficient reasons for their continued detention. They also allege in their observations, relying on Article 18 of the Convention, that their Convention rights were restricted for purposes other than those prescribed in the Convention.

THE FACTS

2. The applicants' details and the names of their representatives are listed in the Appendix.
3. The Government were represented by their Agent, Mr Ç. Əsgərov.

I. BaCkground information

4. The first applicant was a student at Baku State University and the second applicant was a student at Odlar Yurdu University at the time of the events in question. They were members of the civic movement NIDA, a non-governmental organisation established by a group of young people in February 2011. According to its manifesto, NIDA seeks liberty, justice, truth and change in Azerbaijan and it rejects violence and uses only non-violent methods of protest.
5. Following a number of deaths of soldiers in the Azerbaijani army in non-combat situations, from January until March 2013 a number of demonstrations were held in Baku. The demonstrations received wide media coverage and drew the public's attention to the issue of deaths of soldiers serving in the army, for which the government were harshly criticised. The demonstrations were organised through social media and information about them was disseminated through social media and the press. The applicants actively participated in those demonstrations, and NIDA played a key role in their organisation and conduct. Although the demonstrations were peaceful, the police dispersed those who gathered and a number of demonstrators were arrested (see, among many other cases concerning these events, Mehtiyev and others v.Azerbaijan, nos. 20589/13 and 7 others, 6 April 2017; Bayramov v.Azerbaijan, nos. 19150/13 and 52022/13, 6 April 2017; and Hajili and others v. Azerbaijan, nos. 44699/13 and 2 others, 29 June 2017). One such demonstration had been scheduled for 10 March 2013.

II. Institution of criminal proceedings against the applicants and their remand in custody

A. In respect of the first applicant

6. On 7 March 2013 the first applicant was arrested by officers of the Ministry of National Security ("the MNS") and the Prosecutor General's Office. On the same day a search was carried out in the flat where he lived. The search of the flat allegedly uncovered 174.54 grams of narcotic substances and twenty-eight leaflets worded "democracy urgently needed, tel: + 994, address: Azerbaijan" (təcili demokratiya tələb olunur, tel : + 994, ünvan: Azərbaycan). Despite the Court's explicit request to the Government to submit copies of all documents relating to the domestic proceedings, the Government failed to provide the Court with a copy of the record of that search.
7. On 9 March 2013 the first applicant was charged with a criminal offence under Article 234.1 (illegal possession of a quantity of narcotic substances exceeding that necessary for personal use without intent to sell) of the Criminal Code.
8. On the same day the Nasimi District Court ordered that the first applicant be detained for a period of two months. The court justified the first applicant's detention pending trial by citing the gravity of the charges against him and the likelihood that if released he would abscond and obstruct the investigation.
9. The first applicant did not appeal against the Nasimi District Court's decision of 9 March 2013.

B. In respect of the second applicant

10. On 7 March 2013 the second applicant, who was a minor at that time, was arrested and taken to the premises of the MNS. On the same day a search was carried out in the second applicant's flat, where 252.27 grams of narcotic substances and three Molotov cocktails were allegedly found. Despite the Court's explicit request to the Government to submit copies of all the documents relating to the domestic proceedings, the Government failed to provide the Court with a copy of the record of that search.

11. On 9 March 2013 the second applicant was charged with criminal offences under Article 228.3 (illegal possession of weapons, committed by an organised group) and Article 234.1 (illegal possession of a quantity of narcotic substances exceeding that necessary for personal use without intent to sell) of the Criminal Code. The acts attributed specifically to him were that he had illegally obtained narcotic substances and that, by creating an organised criminal group with another member of NIDA (B.G.), he had illegally obtained three Molotov cocktails and then kept them at his place of residence.

12. On the same day the Nasimi District Court ordered the second applicant's pre-trial detention for a period of three months. The court justified the second applicant's detention pending trial by citing the gravity of the charges and the likelihood that if released he would abscond and obstruct the investigation.

13. The second applicant did not appeal against the Nasimi District Court's decision of 9 March 2013.

III. Joint public statement of the law-enforcement authorities and further developments

14. On 8 March 2013 the Prosecutor General's Office and the MNS issued a joint public statement to the press, stating that "illegal attempts to undermine the social-political stability established in the country have recently been made by some radical destructive forces" (son dövrlər radikal yönümlü bəzi destruktiv qüvvələr tərəfindən ölkədə bərqərar olmuş ictimai-siyasi sabitliyin pozulmasına yönəlmiş qanunazidd cəhdlər göstərilir). The statement also confirmed that the applicants and B.G. had been arrested for planning to incite violence and civil unrest during the unlawful demonstration scheduled for 10 March 2013. It also said that criminal proceedings had been instituted against the applicants and B.G., as narcotic substances had been found in their flats, that nineteen Molotov cocktails had been found in B.G.'s flat and three in the second applicant's flat, and that twenty-eight leaflets worded "democracy urgently needed, tel: + 994, address: Azerbaijan" (təcili demokratiya tələb olunur, tel : + 994, ünvan: Azərbaycan) had been found in the first applicant's flat. The statement further read as follows: "it was established during the preliminary investigation that since mid-2012 all three individuals, being addicted to narcotic substances and having become members of NIDA through the Internet, had actively participated in a number of the organisation's illegal activities and had prepared [bottles containing] flammable liquid known as 'Molotov cocktails', [which were] found in their flats" (İlkin istintaqla müəyyən edilmişdir ki, hər üç şəxs 2012-ci ilin ortalarından etibarən internet vasitəsilə "Nida" vətəndaş hərəkatının üzvləri və narkotika aludəçisi

olmaqla, təşkilatın bir sıra qanunsuz tədbirlərində fəal iştirak etmiş və yaşadıqları mənzillərdən aşkar edilmiş "Molotov kokteyli" adlanan tez alışan maye onlar tərəfindən hazırlanmışdır).

15. On the same day NIDA issued a public statement, saying that the arrest of the applicants and B.G. had been politically motivated and had been aimed at silencing the protesters by creating a feeling of fear among them before the demonstration planned for 10 March 2013.

16. Following the applicants' arrest, on various dates in March and April 2013, four of seven board members of NIDA were also arrested within the framework of the same criminal proceedings. The domestic proceedings concerning the arrest and pre-trial detention of the board members of NIDA have already been the subject of the Court's judgment in the case of Rashad Hasanov and Others v. Azerbaijan (nos. 48653/13 and 3 others, 7 June 2018).

IV. Extension of the applicants' pre-trial detention

A. In respect of the first applicant

17. On 15 March 2013 the first applicant lodged a request with the Nasimi District Court to be put under house arrest rather than in pre-trial detention. He asserted, in particular, that there was no risk of his absconding or obstructing the investigation and that the courts had failed to take into consideration his personal situation in that he had a permanent place of residence and was a student.

18. On 18 March 2013 the Nasimi District Court dismissed that request, finding that there was no need to use a preventive measure alternative to remand in custody.

19. On 27 March 2013 the Baku Court of Appeal upheld the first-instance court's decision.

20. Following a request by the prosecutor, on 2 May 2013 the Nasimi District Court extended the first applicant's detention pending trial by two months, until 7 July 2013. The court cited the complexity of the case, the possibility of the first applicant's absconding, the necessity of additional time to carry out further investigative actions, his way of life (həyat tərzi) and his links with foreign States. By the same decision the court also rejected a request made by the first applicant to be put under house arrest rather than in pre-trial detention.

21. On 4 May 2013 the first applicant appealed against that decision. He specifically argued that the Nasimi District Court had failed to justify the extension of his pre-trial detention.

22. On 13 May 2013 the Baku Court of Appeal dismissed the appeal, holding that the first-instance court's decision had been justified.

23. On 2 July and 29 August 2013 the Nasimi District Court again extended the first applicant's detention pending trial for periods of two and three months, respectively. The court relied on the same grounds, namely, the gravity of the charges, the complexity of the case, the existence of a risk of absconding and the need for additional time to carry out further investigative actions.

24. The Nasimi District Court's extension decisions were upheld on appeal by the Baku Court of Appeal on 10 July and 6 September 2013, respectively.

25. No further extension decisions were included in the case file.

B. In respect of the second applicant

26. Following a request by the prosecutor, on 30 May 2013 the Nasimi District Court extended the second applicant's detention pending trial by three months, until 7 September 2013. The court cited the gravity of the charges, the complexity of the case, the possibility of his absconding and the need for additional time to carry out further investigative actions.

27. On 3 June 2013 the second applicant appealed against that decision, arguing that the first-instance court had failed to justify his continued detention. He asserted that there was no risk of absconding or obstructing the investigation and that the first-instance court had failed to take into consideration his personal situation. In that connection, he noted that the lower court had ignored the fact that he was a minor, that he had no criminal record and that he had a permanent place of residence.

28. On 6 June 2013 the Baku Court of Appeal dismissed the appeal, finding that the extension of the second applicant's detention pending trial had been justified. The appellate court did not address any of the second applicant's specific arguments.

29. On 3 July 2013 the second applicant lodged a request with the court asking to be put under house arrest rather than in pre-trial detention, reiterating his arguments.

30. On 4 July 2013 the Nasimi District Court dismissed the request, finding that there was no need to use a preventive measure alternative to remand in custody. It did not examine the second applicant's specific complaints.

31. On 8 July 2013 the second applicant appealed against that decision, reiterating his previous arguments.

32. On 11 July 2013 the Baku Court of Appeal dismissed that appeal, finding that the first-instance court's decision had been justified.

33. On 29 August 2013 the Nasimi District Court again extended the second applicant's detention pending trial for a period of three months. The court relied on the same grounds, namely, the gravity of the charges, the complexity of the case, and the necessity of additional time to carry out further investigative actions.

34. On 2 September 2013 the second applicant appealed against that decision, reiterating his previous complaints.

35. On 5 September 2013 the Baku Court of Appeal upheld the Nasimi District Court's decision of 29 August 2013, finding it justified. The second applicant was still a minor at that time.

36. No further extension decisions were included in the case file.

V. Further developments

37. In September 2013 the first applicant was additionally charged with new criminal offences under Article 28 (preparation of a crime), Article 220.1 (mass disorder) and Article 228.3 (illegal possession of weapons, committed by an organised group) of the Criminal Code.

38. It furthermore appears that in September 2013 the second applicant was additionally charged with new criminal offences under Article 28 (preparation of a crime) and Article 220.1 (mass disorder) of the Criminal Code.

39. On 6 May 2014 the Baku Court of Serious Crimes found the applicants guilty on all counts and sentenced the first applicant to seven and a half years' imprisonment and the second applicant to six years' imprisonment.
40. On 16 December 2014 the Baku Court of Appeal upheld that judgment.
41. On 2 June and 15 October 2015 the Supreme Court upheld the appellate court's judgment in respect of the second and first applicants, respectively.
42. On 17 October 2014 the second applicant and on 17 March 2016 the first applicant were released from serving the remainder of their sentence after being pardoned by presidential decrees.
43. Two separate applications (see applications nos. 57334/15 and 22334/16) concerning the fairness of the criminal proceedings against the applicants, in which various complaints under Articles 6, 10, 11 and 18 of the Convention were raised, are pending before the Court.

RELEVANT LEGAL FRAMEWORK

I. Relevant domestic law and practice

44. The relevant provisions of the Code of Criminal Procedure ("the CCrP") concerning pre-trial detention are described in detail in the Court's judgments in Farhad Aliyev v. Azerbaijan (no. 37138/06, §§ 83-102, 9 November 2010) and Muradverdiyev v. Azerbaijan (no. 16966/06, §§ 35-49, 9 December 2010).
45. Under Article 428.2 of the CCrP, a minor is, for the purposes the criminal proceedings, a person who was below the age of eighteen years at the time of the commission of the crime in question. Remanding a suspect or accused minor in custody is allowed only when it was related to the commission of a "violent less serious crime", a "serious crime" or a "particularly serious crime" (Article 434.1 of the CCrP). Remanding a minor is allowed as an exceptional measure and for as short a period of time as possible (müstəsna tədbir kimi və mümkün qədər qısa müddət ərzində) (Article 434.2 of the CCrP).
46. The relevant decisions of the Plenum of the Supreme Court concerning pre-trial detention are described in detail in the Court's judgment in Allahverdiyev v. Azerbaijan (no. 49192/08, §§ 31-32, 6 March 2014).

II. Relevant international material

47. A number of relevant international documents are described in detail in the Court's judgment in Rashad Hasanov and Others v. Azerbaijan (nos. 48653/13 and 3 others, §§ 79-81, 7 June 2018).
48. The United Nations Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989 and ratified by Azerbaijan on 13 August 1992, in so far as relevant, reads as follows:

"Article 1

"For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.
...

Article 37

"States Parties shall ensure that:
...
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; ...;"

49. The part of General Comment No. 24 (CRC/C/GC/24) of the United Nations Committee on the Rights of the Child concerning children's rights in the child justice system, dated 18 September 2019, reads:

"85. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and for the shortest appropriate period of time; and (b) no child is to be deprived of his or her liberty unlawfully or arbitrarily. Arrest is often the starting point of pre-trial detention, and States should ensure that the law places clear obligations on law-enforcement officers to apply article 37 in the context of arrest. States should further ensure that children are not held in transportation or in police cells, except as a measure of last resort and for the shortest period of time, and that they are not held with adults, except where that is in their best interests. Mechanisms for swift release to parents or appropriate adults should be prioritized.
86. The Committee notes with concern that, in many countries, children languish in pre-trial detention for months or even years, which constitutes a grave violation of article 37 (b) of the Convention. Pre-trial detention should not be used except in the most serious cases, and even then only after community placement has been carefully considered. Diversion at the pre-trial stage reduces the use of detention, but even where the child is to be tried in the child justice system, non-custodial measures should be carefully targeted to restrict the use of pre-trial detention.
87. The law should clearly state the criteria for the use of pre-trial detention, which should be primarily for ensuring appearance at the court proceedings and if the child poses an immediate danger to others. If the child is considered a danger (to himself or herself or others) child protection measures should be applied. Pre-trial detention should be subject to regular review and its duration limited by law. All actors in the child justice system should prioritize cases of children in pre-trial detention.
88. In application of the principle that deprivation of liberty should be imposed for the shortest appropriate period of time, States parties should provide regular opportunities to permit early release from custody, including police custody, into the care of parents or other appropriate adults. There should be discretion to release with or without conditions, such as reporting to an authorized person or place. The payment of monetary bail should not be a requirement, as most children cannot

pay and because it discriminates against poor and marginalized families. Furthermore, where bail is set it means that there is a recognition in principle by the court that the child should be released, and other mechanisms can be used to secure attendance."

50. In January and February 2012 the United Nations Committee on the Rights of the Child considered the combined third and fourth periodic report of Azerbaijan and adopted the concluding observations (CRC/C/AZE/CO/3-4) dated 12 March 2012. The relevant part of these concluding observations states as follows:

"Administration of juvenile justice
75. While noting that the State party has undertaken the provision of some training programmes on juvenile justice for law-enforcement professionals and has initiated attempts to enact legislation on juvenile justice, the Committee remains deeply concerned at the lack of significant improvement regarding the State party's juvenile justice system, despite the Committee's recommendations in 1997 (CRC/C/15/Add.77, paras. 28 and 49) and 2006 (CRC/C/AZE/CO/2, para. 67). It remains particularly concerned that:
(a) The State party has not adopted legislation on juvenile justice that addresses the situation of children in conflict with the law in accordance with the provisions of the Convention;
(b) There are no law-enforcement personnel specialised in child-related investigations and in interrogation of children in conflict with the law;
(c) There are offences for which persons under the age of 18 are tried as adults;
(d) Persons under the age of 18 are often held in pre-trial detention for long periods and are not always detained separately from adults, particularly in the case of female detainees;
(e) Alternatives to the deprivation of liberty are not sufficiently considered and applied, and persons under the age of 18 can be sentenced to detention for a period of up to 10 years;
(f) The conditions of detention are often poor and inadequate, and overcrowding is frequently a serious problem;
(g) Recovery, assistance and reintegration services for persons under the age of 18 in conflict with the law are insufficient.
76. The Committee reiterates its previous recommendations and urges the State party to bring the system of juvenile justice fully into line with the Convention, in particular articles 37, 40 and 39; with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Guidelines for Action on Children in the Criminal Justice System; and with the recommendations of the Committee made at its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238). In this regard, the Committee recommends that the State party:
...
(c) Take all necessary measures to ensure that persons under the age of 18 are deprived of liberty only as a last resort and for the shortest appropriate period of time, in particular by developing and

implementing alternatives to custodial sentences, including the establishment of diversion centres and/or legal clinics for children in conflict with the law;
..."

THE LAW

I. JOINDER OF THE APPLICATIONS

51. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment, pursuant to Rule 42 § 1 of the Rules of the Court.

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

52. Relying on Article 5 § 3 of the Convention, the applicants complained that the domestic courts had failed to justify the need for their pre-trial detention and to provide reasons for their continued detention. Article 5 § 3 of the Convention reads as follows:

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

A. Admissibility

53. The Court notes that this complaint 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

54. The applicants maintained that the domestic courts had failed to provide relevant and sufficient reasons justifying their pre-trial detention. In particular, they submitted that the domestic courts had merely quoted the relevant legal provisions, without assessing their particular circumstances.

55. The Government contested the applicants' submissions, pointing out that the domestic courts had correctly assessed the applicants' situation and had delivered justified decisions on their pre-trial detention. They furthermore submitted that the domestic courts had provided relevant and sufficient reasons justifying the need for the applicants' continued pre-trial detention.

2. The Court's assessment

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

57. As regards the period to be taken into consideration for the purposes of Article 5 § 3, the Court notes that this period commenced on 7 March 2013, when the applicants were arrested, and ended on 6 May 2014, when the Baku Court of Serious Crimes convicted them. Thus, the applicants were both held in pre-trial detention for one year, one month and twenty nine days in total.

58. The Court notes that the applicants' pre-trial detention was extended by a number of decisions delivered by the Nasimi District Court and the Baku Court of Appeal, which also dismissed the applicants' requests to be placed under house arrest rather than in pre-trial detention (see paragraphs 17-24 and 26-35 above). In that connection, the Court observes that both the first-instance court and the appellate court used a standard template. In particular, the domestic courts limited themselves to repeating a number of grounds for detention in an abstract and stereotyped way, without giving any reasons why they considered those grounds relevant to the applicants' cases. They also failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons (see Farhad Aliyev v. Azerbaijan, no. 37138/06, §§ 191-94, 9 November 2010; Muradverdiyev v. Azerbaijan, no. 16966/06, §§ 87-91, 9 December 2010; and Zayidov v. Azerbaijan, no. 11948/08, §§ 64-68, 20 February 2014). The Court also finds it striking that the domestic courts relied on the first applicant's way of life and links with foreign States as grounds for his continued detention, without providing any explanation or information in support of their reasoning (see paragraphs 20 and 22 above).

59. The Court notes that the domestic courts also cited irrelevant grounds when they extended the applicants' pre-trial detention. In particular, they stated that more time was needed to complete the investigation (see paragraphs 20, 23, 26 and 33 above). However, the Court reiterates that, under Article 5 § 3, grounds such as the need to implement further investigative measures, or the fact that proceedings have not yet been completed, do not correspond to any of the acceptable reasons for detaining a person pending trial (see Allahverdiyev v. Azerbaijan, no. 49192/08, § 60, 6 March 2014, and Mammadov and Others v. Azerbaijan, no. 35432/07, § 99, 21 February 2019).

60. The Court also cannot overlook the fact that the domestic courts completely disregarded the second applicant's age in their decisions extending his pre-trial detention. In that connection, the Court notes that the second applicant's pre-trial detention as a minor should have been considered as a measure of last resort and for the shortest appropriate period of time in accordance with Azerbaijan's international obligations (see paragraphs 48-50 above) and Article 434.2 of the CCrP (see paragraph 45 above). However, the domestic courts did not even try to elaborate in their decisions on why this exceptional measure should have been taken in respect of the second applicant (compare Nart v. Turkey, no. 20817/04, § 33, 6 May 2008; Korneykova v. Ukraine, no. 39884/05, § 46, 19 January 2012; and Mahmut Öz v. Turkey, no. 6840/08, § 36, 3 July 2012).

61. In view of the foregoing considerations, the Court concludes that, by using a standard formula merely listing the grounds for detention without addressing the specific facts of the applicants' cases, and by citing irrelevant grounds, the authorities failed to give "relevant" and "sufficient" reasons to justify the need for the extension of the applicants' pre-trial detention.

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

III. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION, TAKEN IN CONJUNCTION WITH ARTICLE 5 § 3 OF THE CONVENTION

63. The applicants argued under Article 18 of the Convention that their Convention rights had been restricted for purposes other than those prescribed in the Convention. Article 18 provides:

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

A. Admissibility

64. The Court notes that this complaint 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

65. The applicants submitted that their arrest and detention had been politically motivated and had been applied with the intention of punishing and silencing them as NIDA members. In that connection, they submitted that they had actively participated in protests against deaths of soldiers in the Azerbaijani army and that a number of members of NIDA had been arrested and detained over the previous few years on account of their activities.

66. The Government's submissions were exactly the same as those that they had made in Rashad Hasanov and Others v. Azerbaijan (nos. 48653/13 and 3 others, §§ 114-15, 7 June 2018).

2. The Court's assessment

67. The Court will examine the applicants' complaint in the light of the relevant general principles set out by the Grand Chamber in its judgments in Merabishvili v. Georgia ([GC], no. 72508/13, §§ 287-317, 28 November 2017) and Navalnyy v. Russia ([GC], nos. 29580/12 and 4 Others, §§ 164-165, 15 November 2018), as well as in the light of the Grand Chamber's findings in its judgment in Selahattin Demirtaş v. Turkey (no. 2) ([GC], no. 14305/17, §§ 425, 429 and 436, 22 December 2020).

68. The Court considers at the outset that in the present application the complaint under Article 18 constitutes a fundamental aspect of the case that has not been addressed above in relation to Article 5 § 3 and merits a separate examination.

69. The Court furthermore observes that the circumstances of the present case and the complaint raised under Article 18 of the Convention by the applicants are similar to those already examined by the Court in the case of Rashad Hasanov and Others (in which the Court found a violation of Article 18 of the Convention, taken in conjunction with Article 5). In particular, the applicants in the present case and the four applicants in the case of Rashad Hasanov and Others were arrested and detained mainly on the basis of the same criminal charges and were subsequently prosecuted and convicted within the framework of the same criminal proceedings (see Rashad Hasanov and Others, cited above, §§ 5-12 and §§ 65-66).

70. However, unlike in the case of Rashad Hasanov and Others, in the present case the Court was not called upon to examine whether the applicants were deprived of their liberty in the absence of a

"reasonable suspicion" of their having committed a criminal offence, as the applicants did not appeal the original decisions depriving them of their liberty (see paragraphs 9 and 13 above) and did not raise this complaint in their appeals against the extension of their pre-trial detention, and thus did not exhaust domestic remedies in this regard. The present case should therefore be distinguished from cases in which an applicant's right or freedom was restricted for a purpose that was not prescribed by the Convention; in those cases no issue arose in respect of a potential plurality of purposes (compare, for example, Rashad Hasanov and Others, cited above, § 119; Aliyev v. Azerbaijan, nos. 68762/14 and 71200/14, § 206, 20 September 2018; and Navalnyy, cited above, § 166). In the present case the Court must deal with the issue of plurality of purposes in the examination of the applicants' complaint under Article 18 of the Convention. The Court will thus examine whether the domestic authorities' decisions to keep the applicants in pre-trial detention also pursued an ulterior purpose, and, if that is the case, whether that ulterior purpose was the predominant purpose of the restriction of the applicants' right to liberty (compare Merabishvili, cited above, §§ 318-54).

71. As regards the question of whether the applicants' continued pre-trial detention pursued an ulterior purpose, the Court has already found in the case of Rashad Hasanov and Others (cited above, §§ 122-24) that the joint public statement of 8 March 2013 issued by the Prosecutor General's Office and the MNS clearly targeted NIDA and its members, stating that "illegal attempts to undermine the social-political stability established in the country have recently been made by some radical destructive forces". It is also clear from the above-mentioned statement that from the very beginning of the criminal proceedings, within the framework of which the applicants were kept in pre-trial detention, the law-enforcement authorities tried to link the applicants' alleged possession of narcotic substances and Molotov cocktails to their membership in NIDA by stating, without any reservation, that "since mid-2012 all three individuals, being addicted to narcotic substances and having become members of NIDA through the Internet, had actively participated in a number of the organisation's illegal activities" (see paragraph 14 above) (see Rashad Hasanov and Others, cited above, § 122).

72. The Court furthermore held that the prosecution authorities intended to demonstrate that NIDA and its members were "destructive forces" and an organisation carrying out "a number of illegal activities", solely relying on the fact that narcotic substances and Molotov cocktails had allegedly been found in the flats of NIDA members (ibid., § 123).

73. The Court also considers that the institution of criminal proceedings against the applicants by the prosecuting authorities and their subsequent pre-trial detention were used by the domestic authorities to prevent the organisation of further protests against the government. In that connection, the Court attaches weight to the timing of the institution of criminal proceedings against the applicants on the eve of the demonstration scheduled for 10 March 2013, following a series of demonstrations against the government in which the applicants and other members of NIDA had actively participated (compare Mammadli v. Azerbaijan, no. 47145/14, § 102, 19 April 2018, and Ibrahimov and Mammadov v. Azerbaijan, nos. 63571/16 and 5 others, § 153, 13 February 2020). The Court also does not lose sight of the fact that the prosecuting authorities in their statement of 8 March 2013 tried to portray twenty-eight leaflets worded "democracy urgently needed, tel: + 994, address:

Azerbaijan" (təcili demokratiya tələb olunur, tel : + 994, ünvan: Azərbaycan), found in the first applicant's flat, as illegal material proving the applicants' intention to incite violence and civil unrest during the unlawful demonstration scheduled for 10 March 2013 (see paragraph 14 above).

74. The Court considers that the above-mentioned elements are sufficient to enable it to conclude that there was an ulterior purpose in the applicants' pre-trial detention; namely, it was aiming at punishing and silencing NIDA members for their active involvement in the demonstrations held against the government regarding the deaths of soldiers serving in the army.

75. The Court must now determine whether the ulterior purpose in question was the predominant purpose of the restriction of the applicants' right to liberty. It reiterates that precisely which purpose is predominant in a given case depends on all the relevant circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and will bear in mind the fact that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (see Merabishvili, cited above, § 307).

76. In that regard, the applicants' case should be viewed against the backdrop of the arbitrary arrest and detention of government critics, civil society activists and human-rights defenders in the country. The Court points out that in the case of Aliyev (cited above, § 223) it found that its judgments in a series of similar cases reflected a pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of the criminal law in breach of Article 18. The Court reaffirmed this finding in its recent judgments relating to the arrest and detention of civil society activists, including members of NIDA (see Natig Jafarov v. Azerbaijan, no. 64581/16, §§ 64-70, 7 November 2019; Ibrahimov and Mammadov, cited above, §§ 151-58; and Khadija Ismayilova v. Azerbaijan (no. 2), no. 30778/15, §§ 113-20, 27 February 2020) and considers that the applicants' situation in the present case reflects this pattern.

77. The Court further notes that the authorities apparently attached utmost importance to their actions targeting NIDA as an organisation and its administration. It therefore appears that the institution of criminal proceedings against the applicants and their subsequent pre-trial detention were used by the domestic authorities to prevent the organisation of further protests against the government regarding deaths of soldiers serving in the army (see paragraph 73 above) and, also, to paralyse NIDA's activities through the subsequent arrest and detention of four board members of NIDA in March and April 2013. The Court has already found that their arrest and detention had been in breach of Article 5 § 1 of the Convention and Article 18 of the Convention in conjunction with Article 5 (see Rashad Hasanov and Others, cited above, §§ 108 and 127). All of the above points to a predominance of the ulterior purpose pursued by the authorities in the applicants' case.

78. This is also seen in the way that the domestic courts handled the extension of the applicants' pre-trial detention. In particular, the domestic courts did not solely fail to give "relevant" and "sufficient" reasons to justify the need for the extension of the applicants' pre-trial detention, but also completely ignored the second applicant's age – a major element which, if it had been taken into account, would probably have resulted in his rapid release from pre-trial detention (see paragraph 60 above).

79. Bearing in mind all the circumstances of the case, the Court is satisfied that the ulterior purpose of the restriction of the applicants' liberty resulting in their continued pre-trial detention constituted the predominant purpose, which was to punish and silence NIDA members for their active involvement in the demonstrations held against the government regarding deaths of soldiers serving in the army.
80. There has accordingly been a violation of Article 18 of the Convention, taken in conjunction with Article 5 § 3.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

81. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

82. The second applicant claimed 124,000 euros (EUR) in respect of pecuniary damage. In that connection, he submitted that 121,391 US dollars (USD) belonging to his father had been taken by the law-enforcement authorities during the search carried out of his flat and that the remaining part of the claimed amount corresponded to the sum that his family had spent on sending him food and regularly visiting him in prison.
83. The Government asked the Court to reject the claim.
84. As to the part of the part of the claim concerning the amount of money taken by the law-enforcement authorities during the search, the Court notes that the present application does not concern the lawfulness of the search in question. Moreover, the second applicant himself stated that the money in question had belonged to his father, who is not an applicant in the present case before the Court. Accordingly, the Court does not discern any causal link between the violations found and the pecuniary damage alleged.
85. As regards the part of the claim concerning the sum that his family had spent on sending him food and regularly visiting him in prison, even assuming a causal link between the pecuniary damage alleged and the violations found, the Court notes that the second applicant did not submit relevant documentary evidence supporting this claim.
86. Accordingly, it rejects the second applicant's claims in respect of pecuniary damage.

2. Non-pecuniary damage

87. Under this head, the first applicant claimed EUR 25,000 and the second applicant EUR 100,000.

88. The Government submitted that the amounts claimed by the applicants were unsubstantiated and excessive. They furthermore submitted that 10,000 Azerbaijani manats (AZN) would constitute reasonable compensation for the non-pecuniary damage allegedly sustained by the applicants.

89. The Court considers that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 20,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

90. The first applicant claimed EUR 2,000 and the second applicant claimed EUR 10,000 for legal services incurred in the proceedings before the Court and the domestic courts. They submitted the relevant contracts concluded with their representatives. The second applicant asked that the compensation in respect of costs and expenses be paid directly into his representative's bank account.

91. The Government considered that the amounts claimed by the applicants were excessive. In their view, AZN 1,000 would constitute reasonable compensation for costs and expenses in respect of the first applicant and AZN 1,500 in respect of the second applicant.

92. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the amount of work carried out by the applicants' representatives, the Court considers it reasonable to award the sum of EUR 1,500 to the first applicant and the sum of EUR 2,000 to the second applicant, covering costs under all heads, plus any tax that may be chargeable to the applicants. The Court also specifies that the amount awarded in respect of the second applicant is to be paid directly into the bank account of his representative.

C. Default interest

93. 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 REASON, THE COURT, UNANIMOUSLY,

1. Decides to join the applications;
2. Declares the applications admissible;
3. Holds that there has been a violation of Article 5 § 3 of the Convention in respect of both applicants;
4. Holds that there has been a violation of Article 18 of the Convention taken in conjunction with Article 5 § 3 of the Convention in respect of both applicants;

5. Holds

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

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, to each applicant, in respect of non-pecuniary damage;
(ii) EUR 1,500 (one thousand five hundred euros), to the first applicant, plus any tax that may be chargeable to him, in respect of costs and expenses;
(iii) EUR 2,000 (two thousand euros), to the second applicant, plus any tax that may be chargeable to him, in respect of costs and expenses, to be paid directly into his representative's bank account;

(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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 18 February 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Registrar

Síofra O'Leary
President