



FIFTH SECTION

CASE OF HASANOV v. AZERBAIJAN

(Application no. 30133/12)

JUDGMENT

STRASBOURG

9 September 2021

This judgment is final but it may be subject to editorial revision.

In the case of Hasanov v. Azerbaijan,

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

Stéphanie Mourou-Vikström, *President*,

Jovan Ilievski,

Arnfinn Bårdsen, *judges*,

and Martina Keller, *Deputy Section Registrar*,

Having regard to:

the application 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 Alisa Azizaga oglu Hasanov (*Əlisa Əzizəğa oğlu Həsənov* – “the applicant”), on 13 April 2012;

the decision to give notice to the Azerbaijani Government (“the Government”) of the complaint concerning Article 5 § 1 of the Convention and to declare the remainder of the application inadmissible;

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

the parties’ observations;

Having deliberated in private on 8 July 2021,

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

INTRODUCTION

1. The application concerns the alleged unlawfulness of the applicant’s detention under Article 5 § 1 of the Convention.

THE FACTS

2. The applicant was born in 1974 and lives in Saatli. He was represented by Mr Y. Shahbazov, a lawyer based in Azerbaijan. The Government were represented by their Agent, Mr Ç. Əsgərov.

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

4. According to the applicant, at around 9-10 a.m. on 24 February 2011 he was arrested by the police during the dispersal of a picket. He did not participate in the picket in question but was passing nearby and spoke with some of the participants. When the police dispersed the picket, he was taken with the participants to the police station. He was detained for about seven to eight hours in the police station before he was taken to the court where he was released.

5. On 24 February 2011 the Saatli District Court issued the applicant with an administrative reprimand under Article 298 (breach of the rules on

the holding of pickets) and Article 310.1 (failure to comply with the lawful order of a police officer) of the Code of the Administrative Offences (“the CAO”).

6. The applicant had no knowledge of the judgment given against him by the first-instance court. Following his requests to that effect, he obtained a copy of the first-instance court’s judgment and was granted leave to appeal.

7. On 13 October 2011 the Shirvan Court of Appeal upheld the first-instance court’s judgment and dismissed the applicant’s appeal as unsubstantiated.

8. According to the Government, on 24 February 2011 the applicant was detained by the police for holding unauthorised protest and for failure to comply with the lawful order of a police officer. An administrative offence report was drawn up in that connection and on the same day the Saatli District Court issued the applicant with an administrative reprimand. Despite the Court’s explicit request to the Government to submit copies of all the documents relating to the applicant’s detention, the Government failed to provide the Court with a copy of any document.

RELEVANT LEGAL FRAMEWORK

CODE OF ADMINISTRATIVE OFFENCES OF 2000

9. Article 298 (Breach of the rules on the organisation and holding of assemblies, demonstrations, protests, marches and pickets) of the CAO, as in force at the material time, provided as follows:

“Any breach of the rules, as set forth in legislation, on the organisation and holding of assemblies, demonstrations, protests, marches and pickets shall be punishable by a reprimand or a fine of seven to thirteen manats.”

10. Article 310 (Deliberate failure to comply with the lawful order of a police officer or military serviceman) of the CAO, as in force at the material time, provided as follows:

“310.1. Deliberate failure [by an individual] to comply with the lawful order of a police officer or military serviceman carrying out their duties to protect public order shall be punishable by a fine of twenty to twenty-five manats or, if that sanction is inadequate in the circumstances of the case and taking into account the character of the offender, by administrative detention for a term of up to fifteen days.”

11. Article 396.1 (Measures to secure administrative-offence proceedings) of the CAO, as in force at the material time, provided for a number of measures including the administrative escorting (*gətirilmə*) of a suspect to a police station and his or her administrative arrest (*inzibati qaydada tutma*). Such measures could be used to put a stop to an administrative offence, to establish an offender’s identity, to compile an

administrative-offence record where this could not be done on the spot, to ensure the timely and correct examination of a case and/or to enforce a decision taken in a case.

12. Article 398.1 (Administrative arrest) of the CAO, as in force at the material time, provided that an administrative arrest was a restriction of the liberty of a natural person for a limited period of time. This measure could be applied in exceptional cases if it was deemed necessary in order to examine thoroughly and promptly a case concerning an administrative offence or to ensure the execution of a decision relating to an administrative offence.

13. Article 399.1 (Duration of the administrative arrest) of the CAO, as in force at the material time, provided that the duration of an administrative arrest could not exceed three hours, save in the cases listed in Article 399.3 of the CAO. Under Article 399.3 of the CAO, a person charged with an administrative offence for which administrative detention was prescribed as a penalty could be detained for up to twenty-four hours.

14. Article 400 (Record of administrative arrest) of the CAO, as in force at the material time, provided that in all circumstances a record of administrative arrest (*inzibati qaydada tutma haqqında protokol*) was to be drawn up containing the following information: the date and place where the record was drawn up; the official position, name, surname and patronymic of the person who drew up the record; the personal details of the arrested person; and the date of and reasons for the arrest. The record had to be signed by the person who had drawn it up and by the arrested person. If the latter refused to sign it, that fact had to be noted in the record.

15. Article 410 (Administrative-offence report) of the CAO provided, at the material time, as follows:

“... 410.4. ... A copy of the administrative-offence report shall be given to the individual who is the subject of the administrative-offence proceedings or to the representative of a legal entity ...”

16. Article 414 (Communication of an [administrative-offence] report (a prosecutor’s decision) for examination) of the CAO provided, at the material time, as follows:

“... 414.2. A report ... concerning an administrative offence punishable by administrative detention shall be sent to a judge for examination immediately after it has been drawn up.”

THE LAW

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

17. The applicant complained under Article 5 of the Convention that his arrest and detention by the police on 24 February 2011 had been unlawful

and had lasted for about seven to eight hours, exceeding the three-hour time-limit allowed by the domestic legislation for detention without a court order within the framework of the administrative proceedings. The Court considers that the present complaint falls to be examined under Article 5 § 1 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

A. Admissibility

18. 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

19. The applicant maintained his complaint. In particular, he submitted that his detention had been unlawful and that he had been unlawfully detained at the police station for a period of about seven to eight hours.

20. The Government contested the applicant's submissions noting that his detention had been lawful and that he had not been deprived of his liberty for a period exceeding that prescribed by domestic law.

2. *The Court's assessment*

21. The Court refers to the general principles established in its case-law set out in the judgment *Nagiyev v. Azerbaijan* (no. 16499/09, §§ 54-57, 23 April 2015), which are equally pertinent to the present case.

22. In the present case, while it is undisputed by the parties that on 24 February 2011 the applicant was arrested and taken to the police station, the parties differ in their submissions concerning the length of the applicant's detention. The Court notes that in the absence of any official document supporting the Government's position, the benefit of the doubt should be given to the applicant, as it falls primarily to the Government to provide a detailed hour-by-hour account supported by relevant and convincing evidence (see *Salayev v. Azerbaijan*, no. 40900/05, § 39, 9 November 2010). In that connection, the Court cannot overlook the fact that, despite its explicit request the Government failed to submit copies of any documents relating to the applicant's detention in order to establish the exact length of his deprivation of liberty (compare *Mammadov and Others v. Azerbaijan*, no. 35432/07, §§ 87-88, 21 February 2019).

23. In any event, even assuming the applicant's deprivation of liberty did not exceed the three hours permitted by the domestic legislation as submitted by the Government, it appears that this deprivation of liberty was not documented at all and constituted unrecorded and unacknowledged detention, which, as the Court has consistently held, is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for the detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see *Anguelova v. Bulgaria*, no. 38361/97, § 157, ECHR 2002-IV; *Nagiyev*, cited above, § 57; and *Nasirov and Others v. Azerbaijan*, no. 58717/10, § 49, 20 February 2020).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

27. The Government submitted that the applicant's claim was unsubstantiated.

28. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation and that compensation should therefore be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 3,000 under this head, plus any tax that may be chargeable on this amount (see *Nasirov and Others*, cited above, § 86).

B. Costs and expenses

29. The applicant claimed EUR 1,500 for legal costs incurred in the proceedings before the domestic authorities and the Court.

30. The Government submitted that the applicant's claim was unsubstantiated.

31. 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. In the present case, as the applicant failed to produce any evidence in support of his claim, the Court considers that no amount should be awarded for legal costs.

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*
 - (a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (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;

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

Done in English, and notified in writing on 9 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller
Deputy Registrar

Stéphanie Mourou-Vikström
President