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

FIFTH SECTION

CASE OF HASANOV AND MAJIDLI v. AZERBAIJAN

(Applications nos. 9626/14 and 9717/14)

JUDGMENT

Art 6 § 1 (criminal) • Overall fairness of proceedings impaired
Art 10 • Freedom of expression • Unlawful arrest, detention and conviction of opposition activists for dissemination of anti-government leaflets

STRASBOURG

7 October 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 Hasanov and Majidli 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. 9626/14 and 9717/14) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Azerbaijani nationals, Mr Ulvi Fakhraddin oglu Hasanov (*Ülvi Fəxrəddin oğlu Həsənov*) and Majid Ali oglu Majidli (*Məcid Əli oğlu Məcidli*) ("the applicants"), on 18 January 2014;

the decision to give notice to the Azerbaijani Government ("the Government") of the complaints concerning Articles 6 and 10 of the Convention;

the parties' observations;

Having deliberated in private on 7 September 2021,

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

INTRODUCTION

1. The applicants complained under Article 10 of the Convention that their arrest, detention and conviction for dissemination of anti-government leaflets had violated their right to freedom of expression. They furthermore complained that the administrative proceedings against them had fallen short of the guarantees of a fair hearing.

THE FACTS

2. The applicants were born in 1987 and 1990, respectively, and live in Baku. Before the Court, they were represented (until his death) by Mr A. Gasimov, a lawyer based in Baku.

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

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

I. RELEVANT BACKGROUND

5. At the material time the applicants were opposition activists and members of two youth organisations, Nida and Free Youth (*Azad Gənclik*), respectively. The second applicant was a member of the executive board of Free Youth. They participated in a number of protests organised by the opposition. In the course of many of those protests, they were arrested and convicted. Some of the arrests and convictions, which occurred between 2010 and 2012, were the subject matter of the Court's judgments in the cases of *Babayev and Hasanov v. Azerbaijan* [Committee], nos. 60262/11 and 2 others, 20 July 2017, and *Bayram Bayramov and Others v. Azerbaijan* [Committee], nos. 74609/10 and 5 others, 16 February 2017.

II. THE APPLICANTS' ARREST AND DETENTION

6. At around 4.30 p.m. on 13 July 2013 the applicants were handing out leaflets while they were ascending on an escalator at Icheri Sheher underground station in Baku.

7. According to the applicants, the leaflets had paraphrased passages from the Constitution of Azerbaijan by stating that it was the people who were the source of the State's power and that it was the people who chose the country's Government.

8. The next day, on 14 July 2013, the applicants were arrested by the police and taken to the Baku metro police department (*polis şöbəsi* – "the police department" – that is to say the police department attached to the Baku metro system).

9. On the same day "administrative offence reports" were drawn up in respect of the applicants by a police officer, J.J. The reports stated that the applicants had "pasted" (the first applicant) or handed out (the second applicant) anti-government leaflets and disobeyed a lawful order given by police officers, and, by doing so, had committed an administrative offence under Article 310.1 (Failure to comply with a lawful order given by a police officer) of the Code of Administrative Offences ("the CAO").

10. Subsequently, J.J. prepared "administrative arrest reports" with respect to the applicants.

11. The applicants were held in police custody overnight.

12. According to the applicants, they were not given access to a lawyer after their arrests or while they were in police custody.

III. JUDICIAL PROCEEDINGS AGAINST THE APPLICANTS

13. The next day, on 15 July 2013, the applicants were brought before the Sabail District Court.

14. The administrative case against each applicant was examined by the same judge but in separate proceedings. The hearing in respect of the first applicant began at 12 p.m., and the hearing in respect of the second applicant, at 12.50 p.m.

15. Apparently, the applicants refused to be represented by the State-funded lawyer, Ms E.Z., appointed to them. According to the applicants, they were not given an opportunity to hire lawyers of their own choosing.

16. The only witness questioned during the court hearings was a police officer, T.N., who testified that the applicants had been distributing anti-government leaflets while ascending an escalator at Icheri Sheher underground station, and that he had approached the applicants and demanded that they refrain from breaching public order, and that the applicants had disobeyed and fled the scene.

17. The applicants stated to the court that on the day in question, 13 July 2013, no police officer had approached them, that they were not guilty of disobeying any order given by a police officer, that they had been arrested the following day in the city centre, and that only at the police department had they learned that they had been arrested for disseminating the above-mentioned leaflets.

18. The Sabail District Court convicted the applicants under Article 310.1 of the CAO for failure to comply with a lawful order given by a police officer and sentenced them both to fifteen days of imprisonment (so-called “administrative detention”). The court’s judgments in both cases relied on T.N.’s statements and on the administrative offence reports drawn up in respect of the applicants.

19. From the first-instance court’s judgments and the minutes of the respective hearings it follows that in both cases no public prosecutor or other public officer representing the prosecution participated at the respective hearings, and the accusation against the applicants was presented by the judge.

20. The applicants lodged appeals with the Baku Court of Appeal seeking the quashing of the first-instance court’s respective decisions. The applicants argued that when disseminating the leaflets in question they had not disobeyed any lawful orders given by a police officer. Moreover, the applicants complained that in their respective cases the first-instance court had failed to examine the content of the disseminated leaflets and to establish what police order, if any, they had allegedly disobeyed.

21. On 19 July 2013 the Baku Court of Appeal dismissed the applicants’ appeals, in substance reiterating the first-instance court’s findings.

22. Officer J.J. participated in the hearing concerning the second applicant and made statements similar to the testimony given by police officer T.N. to the first-instance court.

23. During the appellate proceedings both applicants were represented by Mr R.Z., a lawyer of their own choosing.

RELEVANT LEGAL FRAMEWORK

24. The relevant part of Article 310 of the CAO provided, at the material time, as follows:

Article 310
Deliberate failure to comply with a lawful order given by a police officer or military serviceman

"310.1. Deliberate failure [by an individual] to comply with a lawful order [given by] a police officer or military serviceman while carrying out [his or her] duties to protect public order shall be punishable by a fine of two hundred [Azerbaijani] manats [(AZN)] or, if that sanction is inadequate, given the circumstances of the case and taking into account the character of the offender, by administrative detention for a term of up to one month."

25. The relevant parts of Article 375 of the CAO provided, at the material time, as follows:

Article 375. Defender and representative

"375.1. A defender is admitted to [participate in] administrative offence proceedings in order to provide legal assistance to a person against whom those proceedings are being carried out; a representative is admitted to [participate in] administrative offence proceedings in order to provide legal assistance to an aggrieved person.

375.2. In the capacity of a defender or a representative in administrative offence proceedings may participate a lawyer or other persons.

375.3. A defender or a representative is admitted to participate in administrative offence proceedings from the moment an administrative offence report is drown up. If a person is subjected to administrative arrest ..., a defender is admitted to participate in administrative offence proceedings from the moment of that arrest."

26. The relevant parts of Article 376 of the CAO provided, at the material time, as follows:

Article 376
Compulsory participation of a lawyer

"... 376.2. If it is impossible for the lawyer chosen by the person against whom administrative offence proceedings are being carried out to attend, a judge ... shall appoint a lawyer for that person, in accordance with the legislation of the Republic of Azerbaijan.

376.3. If a person subjected to an administrative arrest has no possibility to hire a lawyer due to [his or her] financial situation, [his or her] legal assistance shall be funded by the State. In this case a lawyer may not refuse to carry out his or her duties."

27. For a summary of other relevant provisions of the CAO see *Gafgaz Mammadov v. Azerbaijan* (no. 60259/11, §§ 33-38, 15 October 2015).

THE LAW

I. JOINDER OF THE APPLICATIONS

28. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

29. The applicants complained, without citing any specific Article of the Convention, that in the proceedings concerning the alleged administrative offence they had not had a fair hearing. The Court considers that this complaint should be examined under Article 6 of the Convention, the relevant parts of which read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

A. Admissibility

30. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

31. The applicants submitted that they had not been represented by a lawyer at the pre-trial stage (during their periods of detention) or at the respective hearings before the first-instance court and that they had not been given an opportunity to appoint a lawyer of their own choosing to represent them before the first-instance court. The courts had ignored the applicants' arguments and had merely based their findings on the statements of a police

officer who had been the sole witness questioned during the respective first-instance hearings.

32. The Government argued that the administrative proceedings with respect to the applicants had been in line with the relevant domestic legislation. Their rights, as set forth under the CAO, had been explained to them by the police. During the respective hearings before the first-instance court, the applicants had refused the assistance of the State-funded lawyer appointed to them and had declared that they would defend themselves in person. Before the Court of Appeal the applicants had been represented by a lawyer of their own choosing.

2. The Court's assessment

33. The principles relevant to the present complaint are summarised in *Gafgaz Mammadov v. Azerbaijan* (no. 60259/11, §§ 74-75, 83-84, 88-89, 91 and 93, 15 October 2015), and *Ibrahim and Others v. the United Kingdom* [GC] (nos. 50541/08 and 3 others, §§ 257-65, 13 September 2016).

34. Similar facts and complaints, regarding accelerated administrative offence proceedings, have already been examined in a number of previous cases against Azerbaijan in which the Court found a violation of Article 6 § 3 taken together with Article 6 § 1 of the Convention (see, among many others, *Gafgaz Mammadov*, cited above, §§ 74-96; *Ibrahimov and Others v. Azerbaijan*, nos. 69234/11 and 2 others, § 93-115, 11 February 2016; and *Huseynli and Others v. Azerbaijan*, nos. 67360/11 and 2 others, §§ 110-35, 11 February 2016).

35. As in the above-cited cases, the police were to transmit the administrative-offence file to a court immediately after having compiled it, and the court was to examine the case on the same day or no later than forty-eight hours after the arrest. The Court reiterates that recourse to that procedure when a "criminal charge" must be determined is not in itself contrary to Article 6 of the Convention as long as the procedure provides the necessary safeguards and guarantees (see *Borisova v. Bulgaria*, no. 56891/00, § 40, 21 December 2006).

36. Turning to the question of procedural safeguards and guarantees, the Court notes that it is not disputed that both applicants were held in police custody without any contact with the outside world, charged with an administrative offence and shortly thereafter taken to a court and convicted. Neither the case-file materials demonstrate, nor do the Government appear to argue, that the applicants had been given an opportunity, as was guaranteed by the CAO (see Articles 375 and 376 of the CAO in paragraphs 25 and 26 above), to appoint a lawyer of their own choosing at the pre-trial stage or prior to the moment when a State-appointed lawyer was designated for the respective sets of proceedings before the first-instance court. Indeed, the Court has already found the same significant defect in a large number of cases against Azerbaijan (see, among others, the above-cited cases of

Gafgaz Mammadov, §§ 90-92; *Ibrahimov and Others*, §§ 110-12; and *Huseynli and Others*, §§ 128-33; *Babayev and Hasanov v. Azerbaijan* [Committee], nos. 60262/11 and 2 others, § 79, 20 July 2017; *Bayram Bayramov and Others v. Azerbaijan* [Committee], nos. 74609/10 and 5 others, §§ 63-64, 16 February 2017; *Ahad Mammadli v. Azerbaijan* [Committee], nos. 69456/11 and 48271/13, §§ 44-45, 16 June 2016; *Hajibeyli and Others v. Azerbaijan* [Committee], nos. 5231/13 and 12 others, §§ 45-46, 30 June 2016; *Huseynov and Others v. Azerbaijan* [Committee], nos. 34262/14 and 5 others, § 57, 24 November 2016; *Jamil Hajiyev v. Azerbaijan* [Committee], nos. 42989/13 and 43027/13, §§ 55-56, 16 February 2017; *Mahammad Majidli v. Azerbaijan* [Committee], nos. 24508/11 and 44581/13, §§ 61-62, 16 February 2017; *Khalilova and Ayyubzade v. Azerbaijan* [Committee], nos. 65910/14 and 73587/14, §§ 50-52, 6 April 2017; *Mehtiyev and Others v. Azerbaijan* [Committee], nos. 20589/13 and 7 others, §§ 55-56, 6 April 2017; *Hajili and Others v. Azerbaijan* [Committee], nos. 44699/13 and 2 others, §§ 56-57, 29 June 2017; *Alisoy and Others v. Azerbaijan* [Committee], nos. 78162/13 and 2 others, § 28, 13 July 2017; and *Abbas and Others v. Azerbaijan* [Committee], nos. 69397/11 and 3 others, § 28, 13 July 2017). In these circumstances, seeing that the applicants had no reason to hope that a request to be given the opportunity to appoint lawyers of their own choosing would be granted, the mere refusal on their part to be represented by a State-appointed lawyer and their declaration that they would defend themselves in person at their respective first-instance hearings cannot be seen as a waiver of their right to choose their own lawyer. Furthermore, the Government failed to demonstrate that any compelling reasons existed for not giving the applicants an opportunity to appoint a lawyer of their own choosing.

37. As to the question whether the above had an impact on the overall fairness of the proceedings, the Court notes firstly that there is nothing in the case-file materials to suggest that the applicants made any statements at the pre-trial stage in the absence of a lawyer or that such statements (if any) were used during their respective trials. It notes secondly that before the Court of Appeal the applicants had access to legal advice by a lawyer of their own choosing (see paragraph 23 above).

38. Therefore, while in the particular circumstances of the present case the practical impossibility for the applicants to exercise their right to appoint a lawyer of their own choosing at the pre-trial and trial stages cannot be regarded as having had a decisive impact, the Court considers that it constitutes an element adversely affecting the fairness of the proceedings as a whole, to be taken into consideration in its assessment (compare the above-cited cases of *Gafgaz Mammadov*, §§ 90-93 and 96; *Ibrahimov and Others*, §§ 110-12 and 115; and *Huseynli and Others*, §§ 128-33 and 135).

39. Furthermore, the CAO did not require the mandatory participation of a public prosecutor or other public officer representing the prosecution, who would present the case against the defendant before a judge. In the present case, the accusation against the applicants was both presented and examined by the judge of the first-instance court (see paragraph 19 above). The Court reiterates that such a state of affairs could not afford the applicants an opportunity to put forward an adequate defence in adversarial proceedings (see the above-cited cases of *Gafgaz Mammadov*, § 81; *Ibrahimov and Others*, § 100; and *Huseynli and Others*, § 117).

40. In addition, repeating the same pattern noted in cases against Azerbaijan concerning accelerated administrative offence proceedings (see the cases cited in paragraph 36 above), neither the first-instance court nor the Court of Appeal took any note of the applicants' important and pertinent arguments concerning both the factual circumstances and the legal issues of their cases – namely, that they had not disobeyed any lawful order given by the police and that the courts should have examined the content of the disseminated leaflets. Nor did the courts clarify the facts that were disputed between the parties: they merely accepted the police officers' versions as presented in the administrative offence reports prepared by the police and as described by the sole witnesses examined, officer T.N., who had arrested the applicants and was the supposed "victim" of the alleged administrative offence under Article 310.1 of the CAO, and officer J.J., who drew up the above-mentioned administrative offence reports. As in the above mentioned similar cases against Azerbaijan, the courts failed to provide adequate reasons why they only considered the witness statements of the police officers (compare the above-cited cases of *Gafgaz Mammadov*, §§ 85-87; *Ibrahimov and Others*, §§ 104-106, and *Huseynli and Others*, §§ 121-23).

41. In view of the entirety of the above elements affecting the overall fairness of the proceedings against the applicants, the Court finds that those proceedings, considered as a whole, were not in conformity with the guarantees of a fair hearing. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

42. The applicants complained that their arrest, detention and conviction for disseminating their leaflets had violated their right to freedom of expression, as provided in Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

43. The Government submitted that the applicants had failed to exhaust the available domestic remedies in respect of their Article 10 complaint because they had never complained of a violation of their right to freedom of expression before the domestic courts – notably, before the appellate court.

44. The applicants did not submit any observations as to the admissibility of their complaint.

45. The Court observes that it is true that, before the first-instance court and in their appeals before the Court of Appeal, the applicants did not expressly refer to any alleged breach of their right to freedom of expression or expressly rely on Article 10 of the Convention or any specific domestic provisions protecting freedom of expression. In this regard, the Court reiterates that Article 35 § 1 requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body "at least in substance" (see, among others, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014, with further references, and *Farzaliyev v. Azerbaijan*, no. 29620/07, §§ 55-57, 28 May 2020). This means that if the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the opportunity to redress the alleged breach in the first place (see, among others, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018).

46. The decisive issue is, therefore, whether the applicants' submissions before the domestic courts, taken as a whole, contained, at least in substance, the grievance they now bring to the Court.

47. In their appeals to the appellate court the applicants asserted that when disseminating the leaflets in question they had not disobeyed any lawful order given by a police officer and, importantly, complained about the failure of the first-instance court to examine the content of the disseminated leaflets and to establish what lawful order given by a police officer (if any) they had allegedly disobeyed (see paragraph 20 above). Albeit indirectly, they therefore requested the domestic court to take a stand on the lawfulness of any police order, if there was one at all, that would require a citizen to stop distributing leaflets – an issue of freedom of

expression. In the specific circumstances of the present case, the Court therefore considers that the above submissions raised in substance the complaint now brought before the Court. Even though the applicants' arguments lacked the appropriate legal references, it ought to have been clear to the appellate court from those submissions and from the nature and context of the offence with which they were charged that the applicants were complaining about, among other things, a breach of their right to freedom of expression.

48. In view of the above considerations, the Court finds that the applicants have raised the complaint in substance before the domestic courts and have exhausted the domestic remedies. It therefore dismisses the Government's objection as to the non-exhaustion of domestic remedies.

49. The Court further notes that present complaint is neither manifestly ill-founded nor inadmissible the on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

50. The applicants submitted that their arrest, detention and conviction had not been lawful, pursued any legitimate aim within the meaning of Article 10 of the Convention or been necessary in a democratic society.

51. The applicants argued that the purpose of those measures had been political – namely, to curb criticism of the government. Even if the disseminated leaflets had been aimed against the government, they had not contained any call or expression that ran against the interests of the country or the public or against the interests of national security, such as incitement to ethnic or religious hostility. The leaflets had simply paraphrased passages from the Constitution by stating that it was the people who were the source of the State's power and that it was the people who chose the country's Government. However, the domestic courts had failed to examine the content of the disseminated leaflets and to establish what order given by a police officer, if any, they had allegedly disobeyed.

52. The Government submitted that the applicants' arrest, detention or conviction had had nothing to do with their freedom of expression. The applicants had been arrested for deliberately disobeying a lawful order given by a police officer who had been on duty and who had a responsibility to protect public order. The applicants had been disseminating leaflets inside the underground station, on an escalator, where many people had been present, and they had been causing a great deal of noise and public disturbance. The actions of the domestic authorities had pursued the aim of protecting public safety and security.

2. The Court's assessment

(a) General principles

53. Freedom of expression, as secured in paragraph 1 of Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see, among many others, *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204).

54. Although freedom of expression may be subject to exceptions, those exceptions "must be narrowly interpreted", and "the necessity for any restrictions must be convincingly established" (see, among many other cases, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216). Furthermore, the Court stresses that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on the debating of questions of public interest (see, among many other cases, *Feldek v. Slovakia*, no. 29032/95, § 74, ECHR 2001–VIII, and *Sürek v. Turkey (no. 1)* [GC], no. 26682/95, § 61, ECHR 1999–IV).

(b) Whether there was interference

55. The Court takes note of the Government's submission that the applicants had been punished for particular behaviour in the course of the disseminating the leaflets – namely, for "causing a great deal of noise and public disturbance" and not for distributing leaflets.

56. The Court observes, however, that none of the police records or the judgments of the domestic courts indicated the exact wording of the oral order allegedly given to the applicants by officer T.N., if there was such an oral order. Furthermore, in describing the circumstances of the administrative offence, the police officers in their administrative offence reports and testimonies before the domestic courts and the domestic courts in their decisions both stated only that the applicants had been disseminating anti-government leaflets. They did not mention any other allegedly incriminating or unlawful behaviour or actions causing "noise and public disturbance". It follows that the Government's above-mentioned submission is not supported by the case-file materials.

57. Since the behaviour held against the applicants by the domestic authorities consisted of their having disseminated the above-mentioned leaflets, the Court considers that the facts of the present cases and, in particular, the applicants' arrest, detention and conviction, which resulted in a sentence of fifteen days' imprisonment, disclose interference directly

related to the applicants' exercise of their right to freedom of expression under Article 10 of the Convention.

58. The interference will not be justified under the terms of Article 10 of the Convention unless it is "prescribed by law", pursues one or more of the legitimate aims set out in paragraph 2 of that Article and is "necessary in a democratic society" for the achievement of that aim or aims.

(c) Whether the interference was lawful

59. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 of the Convention requires that the impugned measure must have some basis in domestic law and also be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and is inherent in all its Articles (see, with further references, *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 249, 22 December 2020).

60. The expression "prescribed by law" in the second paragraph of Article 10 also refers to the quality of the law in question, requiring that it should be accessible to the persons concerned and foreseeable as to its effects (see, among many others, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 140, ECHR 2012; *Delfi AS v. Estonia* [GC], no. 64569/09, § 120, ECHR 2015; and *Selahattin Demirtaş*, cited above, § 249). The notion of "quality of the law" requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (see, with further references, *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 93, 20 January 2020).

61. In particular, it would be contrary to the rule of law for the discretion granted to the competent authorities to be expressed in terms of an unfettered power (see, with further references, *Selahattin Demirtaş*, cited above §§ 249-50).

62. In the present case it has not been alleged by the Government and it has not been established that the leaflets in question contained any speech or ideas prohibited under domestic law.

63. The domestic courts, while they never analysed the content of the leaflets despite the applicants' insistence in that sense, accepted the police's characterisation of those leaflets as "anti-government leaflets" and mentioned this characterisation in their decisions (see paragraphs 9, 16, 18 and 21 above), obviously attaching importance to it, without any explanation of its legal relevance.

64. The Court already found above that the Government's assertion about conduct breaching public order or other unlawful behaviour were devoid of any foundation (see paragraph 56 above). As to the act of disseminating leaflets, this was not unlawful in and of itself and, moreover,

it has not been demonstrated that there were any applicable rules or regulations concerning the dissemination of leaflets inside public transport facilities (in this case, an underground station) that the applicants might have breached. In so far as the only action that was ostensibly held against the applicants was the dissemination of what the authorities termed as "anti-government leaflets", the domestic courts failed to ascertain that any police order that the applicants might have allegedly deliberately disobeyed constituted a "lawful order" within the meaning of Article 310.1 of the CAO. The Court emphasises in this regard that practical interpretation and application of the law by domestic courts must give individuals protection against arbitrary interferences (see, *mutatis mutandis*, *Selahattin Demirtaş*, cited above, § 275). It is contrary to the principle of the rule of law for domestic courts to assume that any order emanating from a police officer automatically and unconditionally qualifies as a "lawful" order, since that would risk giving the police unlimited power.

65. In view of the above, it follows that no factual or relevant legal grounds justifying the interference with the applicants' right to freedom of expression have been established. Noting that the Government had not disputed the applicants' account of the content of the leaflets (see paragraph 7 above), the Court observes that the applicants were arrested and sentenced to prison terms for distributing leaflets which did nothing more than recall the citizens' constitutional right to choose their Government. Such an interference with their rights cannot but be described as a flagrant arbitrary act and a negation of the very essence of the freedom of expression under Article 10 of the Convention, which protects the right to disseminate information and political ideas.

66. The Court also notes that the applicants in the present cases were opposition activists and members, respectively, of the youth organisations Nida and Free Youth (see paragraph 5 above). The Court has dealt with a number of cases brought by members of those organisations, in the context of Articles 3, 5, 6, 10, 11 and 18 of the Convention, and has established – in particular with regard to Nida members – that the authorities have clearly targeted this organisation and its members (see, in particular, *Ibrahimov and Mammadov v. Azerbaijan*, nos. 63571/16 and 5 others, § 155, 13 February 2020; *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, §§ 122-23, 7 June 2018; and *Azizov and Novruzlu v. Azerbaijan*, nos. 65583/13 and 70106/13, § 71, 18 February 2021). The Court considers that the circumstances of the present cases, as examined above, confirm that the measures taken against the applicants fell within the same pattern.

67. The Court concludes that the interference in the present cases – the applicants' arrest, detention and conviction for disseminating leaflets – was not "lawful" within the meaning of Article 10 § 2 of the Convention.

68. There has accordingly been a violation of Article 10 of the Convention in respect of both applicants.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicants claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

71. The Government submitted that the amount claimed by the applicants in respect of non-pecuniary damage was unsubstantiated and unreasonable. They considered that the finding of a violation of the Convention would constitute in itself sufficient reparation for non-pecuniary damage (if any) sustained by the applicants.

72. The Court awards the applicants EUR 5,850 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

73. The applicants also claimed EUR 2,000 for costs and expenses allegedly incurred in respect of legal, translation and postage services.

74. The Government submitted that the applicants had failed to prove that the claimed costs and expenses had been actually incurred, as they had not submitted any relevant supporting documents. The Government asked the Court to adopt a strict approach in respect of the applicants' claim under this head and to reject it.

75. 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 cases, regard being had to the above criteria and the fact that the applicants failed to submit any supporting documents to substantiate their claim, the Court rejects the applicants' claim for costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the applications admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 10 of the Convention;

4. *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, EUR 5,850 (five thousand eight hundred and fifty euros) each, plus any tax that may be chargeable, in respect of non-pecuniary damage**,** to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 7 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

{signature_p_2}

Victor Soloveytchik
Registrar

Síofra O'Leary
President