



Arrest and extended detention of opposition politician following critical blog post was unjustified

In today's Chamber judgment in the case of [Ilgar Mammadov v. Azerbaijan](#) (application no. 15172/13), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 5 § 1 (right to liberty and security) of the European Convention on Human Rights;

a violation of Article 5 § 4 (right to judicial review of one's detention);

a violation of Article 6 § 2 (presumption of innocence); and

a violation of Article 18 (limitation on use of restrictions on rights).

The case concerned the arrest and detention pending trial of an opposition politician and blogger following his reports on street protests in the town of Ismayilli in January 2013.

The Court considered that Mr Mammadov, who had a history of criticising the Government, had been arrested and detained without any evidence to reasonably suspect him of having committed the offence with which he was charged, namely that of having organised actions leading to public disorder. The Court concluded that the actual purpose of his detention had been to silence or punish Mr Mammadov for criticising the Government and publishing information it was trying to hide.

Principal facts

The applicant, Ilgar Eldar oglu Mammadov, is an Azerbaijani national who was born in 1970 and lives in Baku. Having been involved in various political organisations for a number of years, he is the co-founder of an opposition party, the Republican Alternative Civic Movement ("REAL"), for which he considered running in the November 2013 presidential elections. He also maintained an Internet blog in which he commented on political issues. In particular, in November 2012, he strongly criticised members of the National Assembly for having adopted a new law introducing heavy sanctions for unauthorised public gatherings.

On 24 January 2013, Mr Mammadov travelled to the town of Ismayilli, northwest of Baku, in order to report on street riots which had broken out there the previous day. According to media reports, the protests had been triggered by an incident involving V.A., the son of the Minister of Labour and nephew of a local politician. The reports claimed that after being involved in a car accident, V.A. had insulted and physically assaulted passengers of the other car, who were local residents. As a reaction, hundreds of local residents took to the streets and damaged property in Ismayilli thought to be owned by V.A.'s family, including a hotel.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

In a joint press statement, the Ministry of Internal Affairs and the Prosecutor General's Office placed the blame for the rioting on a hotel manager and one of his family members, who had allegedly damaged local property and had incited people to riot. Also in response to the rioting, V.A.'s uncle publicly denied that the hotel which had been damaged belonged to his family.

In his blog Mr Mammadov described his impressions of the events in Ismayilli. In particular, on 25 January 2013, he reported that the events were caused by "the general tension arising from corruption and insolence" of public officials. On 28 January 2013, he reported that the hotel which had been damaged was actually owned by V.A. – referring in particular to information found on the official website of the Ministry of Culture and Tourism and on V.A.'s Facebook page – thereby contradicting directly the earlier denial by V.A.'s uncle. Within one hour after the publication of Mr Mammadov's blog post, the information cited by him was removed from these websites, but his blog entry was extensively quoted in the media.

In another joint press statement, on 29 January 2013, the Ministry of Internal Affairs and the Prosecutor General's Office stated, among other things, that two politicians, including Mr Mammadov, had made appeals to local residents in Ismayilli aimed at social and political destabilisation, and that their "illegal actions" would be investigated.

Subsequently Mr Mammadov was questioned by the prosecutor about his role in the events. According to the record submitted by the Azerbaijani Government, the prosecutor held two face-to-face confrontations, in which two local residents stated that Mr Mammadov had told protesters to throw stones at the police. Mr Mammadov denied these statements as fabricated.

In February 2013, Mr Mammadov was charged with the offences of organising or actively participating in actions causing a breach of public order. A district court ordered his remand in custody for a period of two months, stating in particular that there was a risk he would abscond or disrupt the course of the investigation. Neither the official charges nor the order for his remand in custody mentioned the face-to-face confrontations with the local residents.

Mr Mammadov's detention was subsequently extended on several occasions and his appeals against the detention orders were rejected by the courts. In April 2013, the charges against him were changed to the offence of resistance or violence against public officials, posing a threat to their life or health, which carried a heavier sentence. In March 2014 Mr Mammadov was convicted and sentenced to seven years' imprisonment. His appeal against the conviction is pending.

Mr Mammadov's nomination as a candidate for the presidential elections was refused by the Central Electoral Commission in September 2013, stating that there were a number of invalid signatures among the voter signatures he had submitted in support of his nomination.

Complaints, procedure and composition of the Court

Relying in particular on Article 5 §§ 1, 3 and 4 (right to liberty and security), Mr Mammadov complained in particular: that he was arrested and detained without a "reasonable suspicion" that he had committed a criminal offence; that the national courts failed to provide relevant and sufficient reasons justifying the necessity for his continued detention; and, that there was no adequate judicial review of his detention. Relying on Article 6 § 2 (presumption of innocence), he complained that his right to be presumed innocent was breached by the press statement issued by the Prosecutor General and the Ministry of Internal Affairs alleging that Mr Mammadov had illegally made appeals to local residents aimed at social and political destabilisation. Furthermore, relying in particular on Article 18 (limitation on use of restrictions on rights), he complained that his rights were restricted for purposes other than those prescribed in the Convention. He submitted that his arrest and the criminal proceedings against him had been repressive measures aimed at removing him as a critic of the Government and a potentially serious opponent in the presidential elections.

The application was lodged with the European Court of Human Rights on 25 February 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Isabelle **Berro-Lefèvre** (Monaco), *President*,
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”),
Erik **Møse** (Norway),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),

and also *Søren Nielsen*, *Section Registrar*.

Decision of the Court

Article 5 §§ 1 and 3

Concerning Mr Mammadov’s complaint that there had not been a “reasonable suspicion” against him, within the meaning of Article 5 § 1, to justify his arrest and prolonged detention, the Court first noted that the initial charge of “organising public disorder” had subsequently been replaced by a more serious charge, “mass disorder”, without a change to the description of the facts.

As regards the circumstances of his arrest, the Court found it significant that Mr Mammadov was an opposition politician, who had a history of criticising the Government in the wake of the upcoming presidential elections, and that before his arrest he had published in his blog information which showed that at least part of the official version of what had happened in Ismayilli might not be true.

Furthermore, Mr Mammadov had been charged with “organising” a riot that had already started in Ismayilli one day before his visit to the town. By all accounts, he had nothing to do with the original incident of 23 January 2013 which had triggered the protests. Moreover, the authorities’ own account of the events showed that most, if not all, of the damage caused by the rioting had taken place on the day before Mr Mammadov’s arrival. Against this background, the prosecution had essentially accused him of having – one day after the spontaneous protests had already taken place and within the two hours of his stay in Ismayilli – seized considerable control over the situation, established himself as the leader of the protestors, whom he had not known before, and had directly caused the subsequent disorder.

Mr Mammadov had consistently submitted that the prosecution had failed to produce any evidence giving rise to a reasonable suspicion that he had committed any of the crimes with which he was charged. The Court observed that the Government had not submitted any specific arguments to rebut his assertions. In particular, the prosecution’s official documents mentioned no witness statements or other specific information giving reason to suspect him of those crimes. As regards the records of Mr Mammadov’s face-to-face confrontations with the local residents, they had not been presented to the national courts and they had been submitted by the Government without any explanation as to why they were relevant to the complaint.

The Court concluded that the Government had not demonstrated that during the period under consideration Mr Mammadov had been deprived of his liberty on a “reasonable suspicion” of having committed a criminal offence. There had accordingly been a violation of Article 5 § 1.

Having regard to this finding, the Court considered it unnecessary to examine separately, in particular, whether the reasons given by the national courts for his continued detention had been based on relevant and sufficient grounds, as required by Article 5 § 3.

Article 5 § 4

Mr Mammadov's detention had been ordered and extended, on each occasion, by courts at two levels of jurisdiction. However, the courts had consistently failed to verify the reasonableness of the suspicion against him. They had repeatedly ignored Mr Mammadov's submissions in this regard, notably his argument that there were no reasons to believe that he would abscond and that he had voluntarily appeared before the prosecution as soon as he had been asked to do so. The national courts had simply copied the prosecution's written submissions and used short, vague and stereotyped formulae for rejecting his complaints. The Court therefore considered that there had been no genuine review of the lawfulness of Mr Mammadov's detention, which was sufficient to conclude that there had been a violation of Article 5 § 4.

Article 6 § 2

As regards the press statement issued by the Prosecutor General and the Ministry of Internal Affairs, the Court noted that, given that Mr Mammadov was a politician, it might have been considered reasonable for the authorities to keep the public informed of the criminal accusations against him.

However, the Court considered that the statement, assessed as a whole, had not been made with the necessary discretion. Whereas the relevant paragraph concluded by stating that Mr Mammadov's actions would be "fully and thoroughly investigated" and would "receive legal assessment", this wording was contradicted by a preceding unequivocal declaration, in the same sentence, that those actions had been "illegal". Moreover, in the same paragraph it was stated that it had been "established" that he had called on local residents to resist the police.

Having regard to the statement's wording as a whole, it could only have encouraged the public to believe that Mr Mammadov was guilty before he had been proved guilty under the law. There had accordingly been a violation of Article 6 § 2.

Article 18

The Court had already found that the charges against Mr Mammadov had not been based on a "reasonable suspicion" for the purpose of Article 5 § 1. It could be concluded from this finding that the authorities had not acted in good faith. As the Court had found under Article 5 § 1, it was significant that Mr Mammadov was an opposition politician with a history of criticising the Government, and he had nothing to do with the original incident of 23 January 2013 which had triggered the protests in Ismayilli.

Moreover, the Court considered that his arrest was linked to specific entries in his blog, in particular that of 28 January 2013, in which he shed light on information which the Government had attempted to withhold from the public. He had first been asked to appear for questioning by the prosecutor after publishing that statement. Those circumstances indicated that the actual purpose of the measures taken had been to silence or punish Mr Mammadov for criticising the Government and attempting to disseminate what he believed to be true information which the Government was trying to hide.

The Court therefore concluded that the restriction of Mr Mammadov's liberty had been applied for purposes other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence. This was a sufficient basis for finding that there had been a violation of Article 18 in conjunction with Article 5.

Just satisfaction (Article 41)

The court held that Azerbaijan was to pay Mr Mammadov 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,000 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.