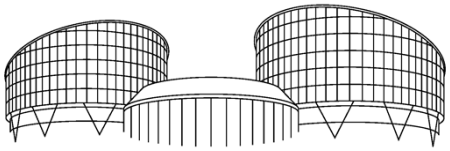

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF YUNUSOVA AND YUNUSOV v. AZERBAIJAN (No. 2)

(Application no. 68817/14)

JUDGMENT

Art 18 • Restriction for unauthorised purposes • Detention of human rights defenders for the purpose of silencing and punishing them for their NGO activities
Art 5 § 1 • Unlawful deprivation of liberty of the applicants at an airport in the context of criminal proceedings against a third party • Arrest and detention in the absence of a "reasonable suspicion" of the applicants having committed a criminal offence
Art 5 § 4 • Lack of adequate judicial review of the lawfulness of detention
Art 6 § 2 • Presumption of innocence • Authorities' press statement issued shortly after the applicants' arrest and containing declaration of their guilt
Art 8 • Respect for private life, home and correspondence • Unjustified intrusion of a male police officer into the toilet resulting in a female applicant being exposed to him in a state of undress • Lack of legitimate aims for the search of home and office, inspection of luggage and seizure of documents
Art 1 P1 • Control of the use of property • Unlawful freezing of the applicants' bank accounts in the context of criminal proceedings against a third party
Art 13 (+ Art 1 P1 and Art 2 P4) • Effective remedy • Seizure of passports and freezing of bank accounts by investigating authorities not amenable to judicial review
Art 34 • Hindering the exercise of the right of application • Impediments to communication between the applicants and their representative whose licence to practise law had been suspended

STRASBOURG

16 July 2020

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 Yunusova and Yunusov v. Azerbaijan (no. 2),

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Victor Soloveytchik, *Deputy Section Registrar,*

Having deliberated in private on 23 June 2020,

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

PROCEDURE

1. The case originated in an application (no. 68817/14) 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, Ms Leyla Islam gizi Yunusova (*Leyla İslam qızı Yunusova* – "the first applicant") and Mr Arif Seyfulla oglu Yunusov (*Arif Seyfulla oğlu Yunusov* – "the second applicant"), on 17 October 2014.

2. The applicants were represented by Mr K. Bagirov and Mr J. Javadov, lawyers based in Azerbaijan, and Ms D. Bychawska-Siniarska, a lawyer from the Helsinki Foundation of Human Rights, a non-governmental organisation based in Warsaw. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

3. The applicants complained about the breach of their rights under Articles 3 and 5, Article 6 § 2, Articles 8, 11, 13 and 18 of the Convention and Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 to the Convention. In particular, they complained that their arrest and pre-trial detention had not been based on a reasonable suspicion and had been carried out for purposes other than those prescribed in the Convention

4. On 5 January 2015 the Government were given notice of part of the application and the remainder was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. It was also decided to grant the application priority treatment under Rule 41 of the Rules of Court. On 25 June 2015 the President of the Section decided, under Rule 54 § 2 (c) of the Rules of Court, to invite the parties to submit further written observations under Articles 5 § 4, 11 and 34 of the Convention.

5. In addition, third-party comments were received from the Council of Europe Commissioner for Human Rights, who exercised his right to intervene in the proceedings and submitted written comments (Article 36 § 3 of the Convention and Rule 44 § 2 of the Rules of Court). Observations were also received from the Human Rights House Foundation and Freedom Now, organisations which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background of the case

6. The background information is similar to a large extent to that in the cases of *Rasul Jafarov v. Azerbaijan* (no. 69981/14, 17 March 2016); *Mammadli v. Azerbaijan* (no. 47145/14, 19 April 2018); and *Aliyev v. Azerbaijan* (nos. 68762/14 and 71200/14, 20 September 2018) in that the applicants' arrest was based in part on similar criminal charges.

7. The applicants were born in 1955 and lived in Baku at the time of the events.

8. The first applicant is a well-known human-rights defender and civil-society activist. She was known for her strong criticism of the Azerbaijani Government and she prepared various reports relating, in particular, to the problem of political prisoners in the country.

9. At the time of the events she was the director of an association named the Institute for Peace and Democracy ("the Association"), a non-governmental organisation specialising in human-rights protection and conflict resolution problems. The Association was founded in 1996 and has been involved in various projects concerning, in particular, human rights, democracy, gender equality, confidence and peace-building measures. According to the applicants, their several attempts to obtain State registration of the Association were unsuccessful. The Association carried out some projects, in cooperation with its partner organisation Azerbaijan Women for peace and democracy in Transcaucasia ("the AWPDT"), which had been registered as a legal entity by the Ministry of Justice in 1996.

10. The second applicant, who is the husband of the first applicant, is a researcher and at the relevant time was the head of the Conflict resolution Department of the Association. He is the author of more than 200 publications, in particular concerning the Armenian-Azerbaijani conflict.

11. In 2005, in the context of Track II diplomacy, known in Azerbaijan as "people's diplomacy", the first applicant launched a joint project with Ms L.B., a director of the Region Research Centre ("the Centre"), a non-governmental organisation based in Armenia. The aim of the project was to focus on peace and reconciliation between the two countries. In 2012 the Association and the Centre launched the first unofficial Armenian-Azerbaijani website, *publicdialogues.info*, which was designed as a platform for the direct dialogue between the Armenian and Azerbaijani civil societies.

B. Events preceding the applicants' prosecution

12. On 16 April 2014 the Prosecutor General's Office instituted criminal case no. 142006022 against Mr Rauf Mirgadirov ("R.M."), an Azerbaijani journalist based in Turkey, in connection with his alleged spying for Armenia. On 21 April 2014 R.M. was arrested and charged under Article 274 (high treason) of the Criminal Code. The circumstances relating to R.M.'s arrest and detention are the subject of a separate application pending before the Court (application no. 62775/14).

13. On 25 April 2014 the investigating officer in charge summoned the second applicant to the Prosecutor General's Office for questioning as a witness in criminal case no. 142006022. The questioning was scheduled at 2.30 p.m. on the same day. A copy of the summons submitted by the Government shows that it was served against the first applicant's signature at 1 p.m. on the same day. According to the summons, the second applicant was warned that if he failed to appear, a decision would be taken to bring him in by force in accordance with Article 178 of the Code of Criminal Procedure ("the CCrP). The second applicant did not appear for questioning.

14. On the same date, the investigator in charge sent a letter to the applicants' bank, asking to have their bank accounts frozen, owing to the "emerging necessity" within criminal case no. 142006022.

15. On 28 April 2014 the first applicant was also summoned for questioning, which was scheduled for 2.30 p.m. on the same day. A copy of the summons submitted by the Government shows that it was served on the first applicant against her signature at 6 p.m. on the same day, that is several hours after the questioning was due to take place. The first applicant did not appear for questioning.

16. On the same date the Yasamal District Court adopted two decisions granting the prosecutor's request to carry out a search at the applicants' flat and at the Association's office respectively within the framework of the criminal case no. 142006022.

17. The relevant parts of the decision concerning the search at the Association's office read as follows:

> "[The investigator in charge of the case] ... applied to the court with a request [to conduct a search and seizure] in the framework of criminal case no. 142006022.
>
> [The investigator in charge of the case] justified his application by [the fact that]this criminal case concerned an investigation under Article 274 of the Criminal Code into [R.M.'s] committing high treason by way of espionage ...
>
> Given that the evidence gathered provides sufficient grounds, it is necessary to carry out a search at the office of the [Association], with which [R.M.] cooperated ..."

18. The text of the decision concerning the search at the applicants' flat was almost identical to the previous one. Notably, the prosecutor in charge justified the search as follows:

> "Given that the evidence gathered provides sufficient grounds, it is necessary to carry out a search of [the flat of the applicants], with whom [R.M.] was in a close relationship ..."

19. In the evening of the same day the applicants arrived at Baku Heydar Aliyev Airport in order to take a flight abroad. According to the Government, the applicants were accompanied by foreign diplomatic personnel. At around 10.30 p.m. at passport control the State Border Service did not allow the applicants to board the flight. Soon after that two investigators from the General Prosecutor's Office came to the airport and searched the applicants' luggage and handbags. Following the search, the investigator seized the applicants' passports and various documents and objects in the luggage, including a laptop, a video camera, and some USB flash drives. It appears from the "inspection record" (*baxış keçirilməsi haqqında protokol*) of 28 April 2014 that the search was authorised by the investigator in charge of the case and was carried out "owing to the necessity which emerged in the context of criminal case no. 142006022". The search began at 11.20 p.m. on 28 April 2014 and ended at 3.15 a.m. on 29 April 2014. The applicants refused to sign the record.

20. The applicants were kept in a room at the airport from 10.30 p.m. on 28 April 2014 until 3.40 a.m. on 29 April 2014 and were not free to leave. At around 3.40 a.m. the applicants, accompanied by plain-clothes officers, were taken by car to unknown destination. According to the applicants, the officers did not tell them where they were being taken. They further alleged that during their transfer the officers verbally abused them and threatened them with rape.

21. On arrival, the applicants realised that they had been brought to their home address. The officers attempted to carry out a search of the applicants' flat, but the first applicant refused to open the door fearing that the officers might plant evidence in order to frame them. Various journalists were already present in the courtyard of the block of flats and were filming the events. The video recordings were later published on a video-streaming service.

22. In the meantime, the second applicant began not to feel well. The journalists present at the scene called an ambulance. He was then diagnosed

with hypertension and at an unspecified time that night taken to hospital where he received inpatient treatment until 6 May 2014. According to the applicants, this was the result of the alleged ill-treatment to which they had been subjected during their arrest and transfer.

23. Following the second applicant's departure, the first applicant was still under the control of the police officers who were gathered at the courtyard and were trying to persuade her to open the door of the flat. According to the first applicant, at some point around dawn she went up to her neighbour's flat in order to use the toilet, but was followed by a male police officer who intruded into the toilet and observed the first applicant in a state of undress. The video recordings submitted by the applicants showed the moment when the first applicant returned to the courtyard, followed by the male police officer, and complained that the latter had intruded and watched her using the toilet facilities. The police officer in question replied to the journalists filming the scene that the first applicant was "talking nonsense". The first applicant then approached the police's officer superior who was also at the courtyard and complained about the officer's intrusion into the toilet. However, the superior officer condoned the actions of his subordinate by replying that the latter had accompanied the first applicant in order to protect her from self-harm and "he had to do that in the toilet as well".

24. Later on, as the officers' persistent attempts to carry out the search at the applicants' flat were unsuccessful, at 7 a.m. on the same day they took the first applicant to the Prosecutor General's Office, where she was questioned until 4.50 p.m. Afterwards, she was taken to the Association's office and then to her flat where the investigator in charge carried out a search on the basis of the Yasamal District Court's above decisions. During the search, the investigator seized various documents and objects, including a computer, different books, business cards and bank documentation. The first applicant was set free after the end of the search at about midnight on 29 April 2014.

C. Remedies used by the applicants in relation to the above events

1. Proceedings concerning the lawfulness of the search of the applicants' luggage and handbags at the airport

25. On an unspecified date the applicants lodged a complaint with a court concerning the alleged unlawfulness of their search at the airport on 28 April 2014. They argued that there had been no court order for conducting the search and that it had been conducted in the absence of their lawyer.

26. On 9 June 2014 the Khazar District Court dismissed the applicants' claim. The court held that the investigator had not conducted a search of the

applicants' persons (*şəxsi axtarış*), but an inspection of objects (*əşyalara baxış*), which did not constitute a search measure requiring a court order under Article 236 of the CCrP. As to the absence of the applicants' lawyer, the court found that the lawyer's presence was not required during this kind of investigative measure. The applicants appealed, reiterating their complaints.

27. On 20 June 2014 the Baku Court of Appeal upheld the first-instance court's decision of 9 June 2014.

2. Proceedings concerning the searches at the applicants' flat and at the Association's office

28. On 1 May 2014 the applicants appealed against the Yasamal District Court's decision of 28 April 2014 ordering a search at their flat. Relying on Article 8 of the Convention, the applicants argued that the search had been unlawful. In particular, they complained that there had been no reasonable grounds for carrying out the search and that they had not been provided with a copy of the search order.

29. On 15 May 2014 the Baku Court of Appeal dismissed the appeal, finding that the search order had been lawful.

30. In the meantime, on 14 May 2014 the applicants appealed against the Yasamal District Court's decision of 28 April 2014 authorising a search of the Association's office. According to the applicants, they did not receive any response to their appeal.

3. Proceedings concerning the lawfulness of the applicants' deprivation of liberty and their alleged ill-treatment

31. On an unspecified date the applicants lodged a complaint with the Yasamal District Court, complaining of their unlawful deprivation of liberty and ill-treatment by the investigating authorities and the police. In particular, they alleged that from the moment of their arrest at the airport at 10.30 p.m. on 28 April 2014 until the end of the search of their apartment which had taken place on the next day, they had been unlawfully deprived of their liberty. They also complained that during their transfer by car from the airport to their flat the police officers had verbally abused them and had threatened them with rape. They submitted that as a result of this treatment the second applicant had become unwell and had been hospitalised. The first applicant further argued that the fact that a police officer had entered into the toilet occupied by her had constituted degrading treatment and that treatment had been condoned by the police officer's superior. In support of this claim, the applicants submitted to the court a list of web addresses where video recordings of the events had been published and could be viewed.

32. On 17 June 2014 the Yasamal District Court dismissed the applicants' claim as unfounded. The court held that the applicants had failed to submit evidence to prove their allegations of ill-treatment and unlawful deprivation of liberty. The applicants appealed.

33. On 10 July 2014 the Baku Court of Appeal upheld the first-instance court's decision and dismissed the applicants' appeal.

4. Proceedings concerning the lawfulness of the seizure of the applicants' passports

34. On an unspecified date the applicants lodged a complaint with the investigator in charge of the case asking him to return their passports. They argued that the seizure of their passports on 28 April 2014 at Baku Heydar Aliyev Airport had been unlawful and had breached their right to liberty of movement. The authorities informed the applicants in reply that their request had been added to the case file and that they would be apprised of the result of its examination. It appears that no further reply followed.

35. On an unspecified date the applicants lodged a complaint with the Nasimi District Court, complaining of the seizure of their passports by the investigator. Relying on Article 2 of Protocol No. 4 to the Convention, they argued that the seizure of their passports and their prevention from leaving the country in the absence of any procedural decision had been unlawful and had violated their right to freedom of movement.

36. On 14 May 2014 the Nasimi District Court refused to admit the applicants' complaint, holding that the investigator's above actions were not enumerated in Article 449 § 3 of the CCrP, which provided a list of specific actions which could be challenged before the domestic courts.

37. On 26 May 2014 the Baku Court of Appeal upheld the Nasimi District Court's decision of 14 May 2014.

38. There is no information in the case file about further developments concerning the return of the applicants' passports.

5. Proceedings concerning the freezing of the applicants' bank accounts

39. On an unspecified date, following unsuccessful attempts to withdraw cash from their bank accounts, the applicants lodged a request with their bank, asking it to explain the reason for freezing their bank accounts.

40. On 12 July 2014 the bank replied that the Prosecutor General's Office had, by a letter of 25 April 2014, requested that the bank suspend all the operations in relation to the applicants' bank accounts on the grounds of the "emerging necessity" within the framework of criminal case no. 142006022.

41. On an unspecified date the applicants lodged a complaint with the Nasimi District Court complaining of the unlawfulness of the prosecuting authorities' actions.

42. On 18 July 2014 the Nasimi District Court refused to admit the claim, holding that the investigator's actions could not be challenged before the domestic courts pursuant to Article 449 § 3 of the CCrP. The court hearing was held in the absence of the applicants and their lawyer.

43. On 24 July 2014 the applicants were provided with a copy of the above decision. They appealed and asked the appellate court to restore the time-limits for lodging an appeal, noting that the hearing before the first-instance court had been held in their absence and that they had been provided with a copy of the decision only on 24 July 2014.

44. On 4 August 2014 the Baku Court of Appeal decided to return the case to the first-instance court without considering the applicants' request. The appellate court held that the question of the restoration of time-limits for lodging an appeal should be examined by the lower court.

45. There is no information in the case file about further developments concerning the freezing of the applicants' bank accounts.

D. Criminal proceedings against the applicants and their remand in custody

1. Institution of criminal proceedings against the first applicant and her pre-trial detention

46. On 30 July 2014 the first applicant was arrested by the police and was taken to the Prosecutor General's Office.

47. On the same day the investigator in charge of the case issued a decision, charging the first applicant under Articles 178 § 3(2) (large-scale fraud), 192 § 2(2) (illegal entrepreneurship), 213 § 2(2) (large-scale tax evasion), 274 (high treason), 320 § 1 and 320 § 2 (falsification of official documents) of the Criminal Code. The decision contained a description of the incriminating acts attributed to the first applicant and indicated that there was "sufficient incriminating evidence" to charge the first applicant without referring to any specific piece of evidence in this regard.

48. As regards the crime of high treason, the first applicant was accused, together with the second applicant, of cooperating since 2002 with various agents of the special services of Armenia, including Ms L.B., to the detriment of the national security of Azerbaijan. This cooperation had been allegedly pursued under the disguise of the joint projects carried in the context of "people's diplomacy" between the Association and the Centre as well as other NGOs. Notably, the first applicant was accused of receiving together with the second applicant large sums of money in grants from international donors as well as from Journalistic Studies, an NGO based in

Armenia, in exchange for recruiting persons for espionage. In particular, they had allegedly recruited R.M. for this purpose and organised on various dates from 2008 to 2013 the latter's meetings in Armenia and Georgia with agents of the Armenian secret service, including L.B. During these meetings R.M. had allegedly provided information on the location of military bases and strategic infrastructure in Azerbaijan.

49. As regards the charges related to the crimes of illegal entrepreneurship and large-scale tax evasion, the first applicant was accused of receiving between 2006 and 2014, as a chairwoman of the Association, which lacked State registration, and a deputy chairwoman of AWPDT, a number of grants in the total amounts of 167,199.57 Azerbaijani manats (AZN) (approximately EUR 159,238 at the material time), 620,878.94 US dollars (USD) and 263,745.49 euros (EUR) from the United States of America's National Democratic Institute, the German Marshall Fund and other donor organisations for various projects, under relevant grant agreements which she had failed to register with the relevant State authority.

50. As to the charge of falsification of official documents, the first applicant was accused of inserting false information in various financial documents of AWPDT.

51. As regards the charge of large-scale fraud, the first applicant was accused of acquiring, by abuse of trust, various sums in the total amount of USD 78,130.42 paid by donors under the grant agreements. Specifically, it was stated that the first applicant had withdrawn this money from AWPDT's bank account and, together with the second applicant, had placed it in instalments in their personal joint bank accounts on various dates between 2009 and 2014.

52. On the same day the prosecutor in charge lodged an application with the Nasimi District Court, asking it to order the first applicant's remand in custody on the basis of the official charges brought against her. The application was essentially a copy of the text of the decision to criminally charge the applicant. During the court hearing held on the same day the first applicant argued that the charges brought against her were "surreal" and asked the court to dismiss the prosecutor's application. The District Court, relying on the prosecutor's request, ordered the first applicant's detention for a period of three months. The court justified the application of the preventive measure of remand in custody by the seriousness of the charges and the likelihood that if released she might abscond or obstruct the investigation. The court's decision did not refer to any specific piece of evidence which had led to a reasonable suspicion against the first applicant and the latter's complaint as regards the lack of evidence supporting the charges remained unanswered.

53. On 1 August 2014 the first applicant appealed against this decision, claiming that her detention was unlawful. She submitted, in particular, that there was no reasonable suspicion that she had committed a criminal

offence and that the real purpose of her detention was to punish her for her human-rights activities, in particular in retaliation for her reports about the problem of political prisoners in the country. She also argued that there was no justification for the application of the preventive measure of remand in custody.

54. On 6 August 2014 the Baku Court of Appeal dismissed the appeal, finding that the first-instance court's decision had been lawful. The first applicant's above complaints were left unanswered by the appellate court.

55. On 24 October 2014 the Nasimi District Court, following an application by the prosecutor, extended the first applicant's detention by four months. During the court hearing the first applicant complained *de novo* that there were no lawful grounds for her pre-trial detention because no evidence whatsoever had been presented by the prosecution to support the charges brought against her. The first applicant's complaints were left unanswered by the court.

56. On 27 October 2014 the first applicant appealed, reiterating her complaints concerning the lack of reasonable suspicion and the real purpose of her detention.

57. On 30 October 2014 the Baku Court of Appeal upheld the first-instance court's decision, leaving the first applicant's complaints without examination.

58. No further decisions extending the first applicant's detention are available in the case file.

2. *Institution of criminal proceedings against the second applicant and his pre-trial detention*

59. On 30 July 2014 the second applicant was questioned by an investigator at the Prosecutor General's Office. Following the questioning, he was charged under Articles 178 § 3(2) (large-scale fraud) and 274 (high treason) of the Criminal Code. The incriminating acts attributed to the second applicant were similar to those of which the first applicant was accused under the respective Articles of the Criminal Code (see paragraphs 48 and 51 above). The decision noted that there was "sufficient incriminating evidence" to charge the second applicant without referring to any specific piece of evidence in support of those charges.

60. On the same day the investigator decided to apply in respect of the second applicant the preventive measure of placement under police supervision, taking into account his state of health (for further details see *Yunusova and Yunusov v. Azerbaijan*, no. 59620/14, § 19, 2 June 2016).

61. On 5 August 2014 the second applicant was arrested by the police. On the same date the prosecutor lodged an application with the Nasimi District Court asking it to replace the second applicant's placement under police supervision by the preventive measure of remand in custody. The prosecutor justified his request by the second applicant's failure to comply

with the requirements of the preventive measure of placement under police supervision. During the court hearing held on the same day the second applicant argued that the charges against him were unfounded and asked the court to dismiss the prosecutor's application. The District Court, citing the prosecutor's application, ordered the second applicant's detention for a period of three months. The court justified the application of the preventive measure of remand in custody by the seriousness of the charges and the likelihood that if released he might abscond and obstruct the investigation. As in the case of the first applicant, the court's decision did not refer to any specific piece of evidence which formed a reasonable suspicion against the second applicant and the latter's complaints in this regard remained unanswered.

62. On 8 August 2014 the second applicant appealed against this decision. He submitted, in particular, that there was no reasonable suspicion that he had committed a criminal offence and that there was no justification for the replacement of the preventive measure of placement under police supervision by the preventive measure of remand in custody. He further pointed out that the court had failed to justify his detention on remand and that his detention was related to his activities as a civil-society activist and his wife's activities as a human-rights defender.

63. On 11 August 2014 the Baku Court of Appeal dismissed the appeal, finding that the second applicant's detention was justified. His complaints concerning the lack of reasonable suspicion and the real purpose of his detention were left unanswered by the appellate court.

64. On 29 October 2014 the Nasimi District Court, citing the prosecutor's application, extended the second applicant's detention by four months. During the hearing the second applicant maintained that the criminal charges against him were unfounded and his detention was unjustified. His complaints were left unanswered. The second applicant appealed.

65. On 6 November 2014 the Baku Court of Appeal upheld the first-instance court's decision, leaving the second applicant's complaints without examination.

66. No further decisions extending the second applicant's detention are available in the case file.

3. The applicants' criminal conviction and their subsequent release from detention

67. While no further information has been submitted by the applicants as regards the further developments in their case, according to publicly available information on 13 August 2015 the applicants were convicted and sentenced by the Baku Court for Serious Crimes to eight and a half and seven years' imprisonment respectively. Meanwhile, the second applicant was released pending trial owing to his state of health.

68. On 9 December 2015 the Baku Court of Appeal quashed the judgment of 13 August 2015 and commuted the applicants' sentence to five years' imprisonment suspended on probation. The first applicant was also released from detention.

69. In April 2016 the applicants left Azerbaijan for the Netherlands where they sought political asylum.

70. The applicants' criminal trial is the subject of a separate application which is pending before the Court (application no. 51984/19).

E. Joint statement of 31 July 2014 by law-enforcement authorities concerning the criminal proceedings against the applicants

71. On 31 July 2014 following the applicants' arrest the Prosecutor General's Office and the Ministry of National Security issued a joint press statement. This statement officially informed the public of the institution of criminal proceedings against the applicants and reproduced the description of the incriminating acts contained in the decisions to charge the applicants. The statement reads as follows:

> "As we have already informed previously, on 19 April 2014 [R.M.] was arrested as a suspect based on reasonable suspicion that he had committed a crime of high treason by espionage... and charged as an accused under Article 274 of the Criminal Code of the Republic of Azerbaijan.
>
> It has been established that (*müəyyən edilib ki*) [the first applicant] since 2012 under the disguise of the joint projects carried with [various individuals based in Armenia] in the context of "people's diplomacy"... recruited [R.M.] for espionage to the detriment of the national security of the Republic of Azerbaijan and together with [the second applicant] organised [R.M.]'s trips to the Republic of Armenia.
>
> During some of these trips [the second applicant] together with [R.M.] organised meetings with [D.Sh.], the former minister of national security of the Republic of Armenia, and representatives of other organisations operating under control of secret services.
>
> Moreover, [the applicants] in order to involve to secret cooperation certain citizens of the Republic of Azerbaijan, whose names cannot be disclosed at present, fulfilled their task by giving instructions to collect information concerning the current situation in socio-political, energy, industrial areas and military equipment supplies ...
>
> As a result, they transferred through [R.M.] to the representatives of the secret services of the enemy state photographs of the concrete locations of military bases, airports and other strategic public infrastructures.
>
> In addition, [the first applicant]... by acquiring profit in the total amount of 526,943 [Azerbaijani] manats under the grant agreements, which she failed to register with the state authorities, carried out illegal entrepreneurship and avoided payment of taxes on a very large scale to the state budget due in accordance with tax legislation in the total amount of 369,378 manats.

> At the same time, there is a reasonable suspicion that [the applicants] took possession by abuse of trust by withdrawing 88,468 USD dollars from the [AWPDT]'s bank account...and placing it [to their personal bank accounts].
>
> In order to question [the applicants] concerning the indicated circumstances, it has been decided to bring [the applicants] by force before the investigating authority because they failed to appear on multiple occasions...
>
> Having regard to the existence of the reasonable suspicion that [the first applicant] committed criminal offences provided for by Articles 274, 178.3.2, 192.2.2, 213.2.2, 320.1 and 320.2 of the Criminal Code and [the second applicant] under Articles 274 and 178.32 of the same Code, on 30 July 2014 they were charged as accused under the said Articles...
>
> [The applicants'] rights to legal aid ... were respected.
>
> At present, the criminal investigation and the legal assessment of all actions is under way and the public will be informed of its results."

F. Statements by public officials and politicians from the ruling party concerning the cases of arrested human-rights activists

72. Before and after the applicants' arrest, numerous articles about them and the Association as well as other human-rights defenders and civil-society activists were published in the State media and in media organs allegedly close to the government. In those articles, the applicants together with other activists were described as "spies for foreign interests" and "traitors". Moreover, a number of politicians from the ruling political party and members of the Government made similar comments about NGO activists and human-rights defenders in Azerbaijan (for the content of some of these comments see *Rasul Jafarov v. Azerbaijan*, no. 69981/14, §§ 36-41, 17 March 2016).

G. The applicants' contact with their representative before the Court, Mr Bagirov

73. The applicants' representative, Mr Bagirov, was a lawyer and a member of the Azerbaijani Bar Association ("the ABA"). In November 2014 disciplinary proceedings were instituted against him by the ABA and he was suspended from practising pending those proceedings. Following Mr Bagirov's suspension from the bar, the domestic authorities stopped allowing him to meet with six of his clients who were being held in detention, including the applicants (for further details see *Hilal Mammadov v. Azerbaijan*, no. 81553/12, §§ 51-57, 4 February 2016, and *Rasul Jafarov*, cited above, §§ 43-49). The proceedings concerning Mr Bagirov's suspension to practice law are the subject the Court's judgment in the case of *Bagirov v Azerbaijan*, nos. 81024/12 and 28198/15, 25 June 2020 (not final).

II. RELEVANT DOMESTIC LAW AND PRACTICE

74. A summary of domestic law, including most of the relevant provisions of the Criminal Code and the Code of Criminal Procedure as well as of the relevant international reports may be found in *Rasul Jafarov* (cited above, §§ 50-84). Further information on domestic law relevant to the present case is summarised below:

A. Criminal Code

75. The relevant provisions of the Criminal Code ("the CC") provided as follows at the time of the events:

Article 178. Fraud

"178 § 1. Fraud, that is to say taking possession of property or acquisition of property rights of others, by abuse of trust or deceit

is punishable by a fine in the amount of [AZN 100 to 800], or 360 to 480 hours of community service, or correctional work for a period of up to two years, or imprisonment for a period of up to two years ...

...

178 § 3. Commission of the same acts:

...

178 § 3 (2). by inflicting significant damage

is punishable by imprisonment for a period of seven to twelve years. ..."

Article 274. High treason

"High treason, that is to say a deliberate act committed by a citizen of the Republic of Azerbaijan to the detriment of the Republic of Azerbaijan's sovereignty, territorial inviolability, State security or defence capacity: [namely] joining the enemy; espionage; the transfer of State secret to a foreign State; [or] providing assistance to a foreign State, organisation or their representatives by carrying out hostile activity against the Republic of Azerbaijan,

is punishable by deprivation of liberty for a period of twelve to twenty years, or life imprisonment."

Article 320. Falsification, illegal fabrication and sale of official documents, State awards, seals, stamps and forms or use of falsified documents

"320 § 1. Falsification, illegal fabrication or sale, with the purpose of its use, of a certificate or other official document granting rights or discharging from obligations as well as fabrication and sale with the same purpose of falsified awards of the Republic of Azerbaijan, seals, stamps and forms

is punishable by a fine in the amount of [AZN 200 to 500], or correctional work for a period of up to two years, or imprisonment for a period of up to two years.

320 § 2. Deliberate use of falsified documents specified in Article 320 § 1 of the present Code

is punishable by a fine in the amount of [AZN 200 to 500], or 240 to 300 hours of community service, or correctional work for a period of up to one year, or imprisonment for the same period ..."

B. Code of Criminal Procedure

76. The relevant provisions of the Code of Criminal Procedure ("the CCrP") provided as follows at the time of the events:

Article 177. Right to carry out coercive investigative measures

"177 § 1. The authority conducting criminal proceedings may carry out coercive investigative measures in order to ensure the normal course of the investigation ...

177 § 2. If the conduct of an investigative measure is not authorised by the person concerned and the coercive conduct of such a measure requires a court decision, the prosecutor supervising the preliminary investigation, after acceding to a reasoned request by the investigator, applies to the court with a petition.

177 § 3. The coercive conduct of the below investigative measures requires, as a general rule, a court decision:

177 § 3(1). conduct of inspection, search, seizure and other investigative measures in a residential place, office or industrial buildings;

177 § 3(2). search of a person against his or her will, except an arrested or detained person;

177 § 3(3). attachment of property;

177 § 3(4). seizure of postal, telegraphic and other dispatches;

177 § 3(5). interception of conversations held by telephone and other means as well as of information sent via telecommunications and other technical means;

177 § 3(6). obtainment of information about financial transactions, bank accounts, tax payments, private, family life, [as well as information containing] State, commercial or professional secrets;

177 § 3(7). exhumation;

177 § 3(8). suspension of execution of suspected operations relating to legalisation of monetary funds and other property obtained by crime and terrorism financing.

177 § 4. inspection and other investigative measures in a residential place, service or industrial buildings as well as the investigative measures provided by Articles 177 § 3(6) and (7) of this Code may be conducted only on the basis of a court decision. The investigator may forcibly conduct based on his or her own decision and without a court decision the following measures:

177 § 4(1). inspection, search and seizure in a residential place, office or industrial buildings – on the grounds and under the circumstances provided by Article 243 § 3 of this Code;

177 § 4(2). search of a person – under the circumstances provided by Article 238 § 2 of this Code;

177 § 4(3). attachment of property – under the circumstances provided by Article 249 § 5 of this Code;

177 § 4(4). seizure of postal, telegraphic and other dispatches and interception of conversations held by telephone and other means as well as of information sent via telecommunication and other technical means – under the circumstances requiring collection of evidence without delay in cases of grave and especially grave crimes against a person or State authority;

177 § 4(5). suspension of execution of suspected operations relating to legalisation of monetary funds and other property obtained by crime, and to terrorism financing – under the urgent circumstances in which there are sufficient grounds to suspect that an operation with monetary funds and other property is aimed at terrorism financing or legalisation [of such property] obtained by crime.

177 § 5. ... The decision of the investigator shall justify the necessity and the urgency of the conduct of an investigative measure without a court decision ..."

Article 178. Forcible appearance

"178 § 1. Forcible appearance shall entail bringing a person by force to the authority conducting criminal proceedings and forcibly ensuring his or her participation in investigative or other procedures.

178 § 2. This measure may be applied to a person participating in criminal proceedings and summoned by the authority conducting criminal proceedings only in the following circumstances:

178 § 2(1). if he or she fails to attend in response to a compulsory summons of the authority conducting criminal proceedings without good reason;

178 § 2(2). if he or she evades receipt of the summons from the authority conducting criminal proceedings;

178 § 2(3). if he or she hides from the authority conducting criminal proceedings;

178 § 2(4). if he or she has no permanent place of residence.

178 § 3. Children under the age of 14, pregnant women, persons who are seriously ill and victims of a criminal offence bringing a private criminal prosecution may not be forcibly brought before the authority conducting criminal proceedings.

178 § 4. Forcible appearance is carried out in accordance with a decision of the authority conducting criminal proceedings or with a court decision on the basis of an application by participants in the criminal proceedings.

178 § 5. The decision to forcibly bring a person before the authority conducting criminal proceedings shall be enforced by the investigative authority or by another authority responsible for this duty under the law."

Article 236. Inspection

"236 § 1. An investigator inspects the crime scene, buildings, documents, objects and human and animal corpses in order to find traces of the crime and other material objects of potential evidentiary value and to determine the circumstances of the crime and other circumstances relevant for the case.

...

236 § 4. An investigator inspects visible objects on condition of not breaching citizens' rights ..."

Article 242. Conduct of a search or seizure

"242 § 1. Where the available evidence or material obtained following an investigation gives rise to a reasonable suspicion that a residential place, service or industrial buildings or other place contains, or that certain persons are in possession of, items or documents of potential significance to a case as evidence, the investigator may conduct a search ..."

Article 243. Grounds for conducting a search or seizure

"243 § 1. As a rule, the search and seizure shall be carried out by a court decision. The court shall deliver a decision on conducting a search or seizure following a reasoned request from the investigator and the submissions from the prosecutor in charge of the investigation ..."

Article 248. Attachment of property

"248 § 1. Attachment of property:

...

248 § 1(3). when imposed on bank deposits shall prevent any further transactions in respect of those deposits."

Article 249. Grounds for attachment of property

"249 § 1. The attachment of property may be imposed only if the material collected in the criminal case provide sufficient grounds [for doing so].

249 § 2. As a rule, the attachment of property shall be carried out by a court decision ...

...

249 § 5. In cases of urgency and when there is specific information that allows the suspicion that property, objects and assets acquired by criminal means may be destroyed, damaged, contaminated or concealed by the person who committed the crime or alienated [by him or her] to cover the civil claim brought against him or her, the investigator may attach property without a court decision, provided that the requirements of Articles 177 § 2 and 177 § 5 of this Code are met.

249 § 6. In the circumstances provided by Article 249 § 5 of this Code, the investigator shall issue a reasoned decision on the attachment of property ..."

Article 449. Lodging a judicial complaint against procedural acts or decisions taken by the authority conducting criminal proceedings

"...

449 § 2. The following persons shall have the right to lodge a complaint against procedural acts or decisions taken by the authority conducting criminal proceedings:

449 § 2(1). the accused (suspected) person and his or her defence counsel;

449 § 2(2). the victim and his or her legal representative;

449 § 2(3). other persons whose rights and freedoms have been violated as a result of the procedural decision or act.

449 § 3. The persons referred to in Article 449 § 2 of this Code shall have the right to lodge a complaint with a court concerning the procedural acts or decisions taken by the authority conducting criminal proceedings in connection with the following matters:

449 § 3(1). refusal to admit a criminal complaint;

449 § 3(2). arrest and detention;

449 § 3(3). breach of the rights of an arrested or detained person;

449 § 3(3)(1). transfer of a detained person from a remand prison to a temporary detention facility;

449 § 3(4). infliction of torture or other inhuman treatment on a detained person;

449 § 3(5). refusal to open criminal proceedings, suspension or termination of criminal proceedings;

449 § 3(6). coercive conduct of an investigative measure, application of a measure of procedural compulsion or carrying out an operational search measure without a court decision;

449 § 3(7). removal of a defence counsel of an accused (suspect)."

C. Decisions of the Plenum of the Supreme Court

1. Decision "on the judicial practice concerning the crime of fraud" of 31 January 2002

77. The relevant part of that decision, as in force at the time of the events, read as follows:

"... The crime of fraud is carried out by way of deceit or abuse of trust. This crime often relates to an illicit purpose aimed at taking by unlawful means possession of the property of others by the accused in the context of conclusion and execution of employment, work, service and similar contracts ..."

2. Decision "on the application of the legislation by the courts during the consideration of applications for the preventive measure of remand in custody in respect of an accused" of 3 November 2009

78. The relevant part of that decision reads:

"3. In accordance with the legislation, there must be substantive and procedural grounds justifying remand in custody. The substantive grounds are to be understood as the evidence establishing a connection between the accused and the commission of the criminal offence of which he has been accused. The procedural grounds consist of the grounds justifying the lawfulness and necessity of remand, as determined by the court from the combination of the circumstances set out in Article 155 of the Code of Criminal Procedure ["the CCrP"].

When deciding to apply the preventive measure of remand, the courts must not be content with only listing the procedural grounds set out in Article 155 of [the CCrP],

but must verify whether each ground is relevant in respect of the accused, and whether it is supported by the material in the case file. In so doing, the nature and gravity of the offence alleged to have been committed by the accused, information about his personality, age, family situation, occupation, health and other circumstances of that kind must be taken into consideration ...

6. Applications for remand, extension of the detention period and replacement of detention with house arrest or release on bail must be considered in camera by a single judge in the court building within twenty-four hours of their receipt (regardless of whether it is a public holiday or after working hours). The presence at the hearing of the person whose rights may be restricted by the application is compulsory.

The courts must take into account that the consideration of applications for remand or for extension of the detention period in the absence of the accused is allowed only in exceptional circumstances where it is not possible to ensure his presence at the hearing. Those circumstances may exist where the accused has absconded from the investigation, is being treated in a psychiatric hospital or for a serious illness, or where there are extraordinary circumstances, a declaration of quarantine, or other similar circumstances ...

8. In accordance with Article 447.5 of [the CCrP], when considering an application for remand, a judge has a right to review the documents and material evidence serving as a basis for the application.

The courts must appreciate that this provision of criminal procedural legislation does not provide for the examination and assessment of evidence by the courts. The judicial review under this provision should only consist of reviewing the initial evidence giving rise to the suspicion that the accused has committed a criminal offence and verifying the existence of the procedural grounds required for remand.

9. The courts should apply more scrutiny in ensuring that the material submitted by the preliminary investigation authority in connection with this issue is complete and sound. ... The application [for remand] must be accompanied by the material necessary for its consideration, for example, copies of records and decisions on the institution of the criminal proceedings, the accused's arrest, the accused's being charged, his questioning, and identity documents. Under Article 447.5 of [the CCrP], the judge has a right to request and review other documents (for example, statements given in connection with the charges or records of face-to-face formal confrontations) as well as the material evidence in order to determine whether the application [for remand] is substantiated. ...

13. ... the courts are reminded that, although the legislator determined the same material and procedural grounds and rules for the consideration of both applications for remand and applications for extension of a detention period, since the extension of a detention period restricts a person's right to liberty as well as his right to the presumption of innocence for a long period, when considering applications of this kind, the courts must be careful, verify the grounds and reasons for the extension of the detention, and justify in a different manner in their decisions the necessity of extending the detention period from the necessity of the [initial] application of remand.

While considering applications for extension of the accused's detention period, courts must verify in detail the arguments in the application as to why it is not possible to terminate the preliminary investigation within the period previously established. In so doing, they must take into account that, in accordance with the case law of the European Court of Human Rights, relying on the same grounds which

> formed the basis of the [initial] application of remand in respect of the accused when ordering the extension of his detention period is considered a violation of the right to liberty and security from the point of view of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE APPLICANTS' ILL-TREATMENT DURING THEIR TRANSFER IN THE POLICE CAR

79. The applicants complained that they had been verbally abused and threatened with rape by police officers during their transfer by car from the airport to their flat during the night from 28 to 29 April 2014. They relied on Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

80. The Government submitted that the applicants had failed to produce any evidence to substantiate their allegations.

81. The applicants maintained their complaint.

82. Allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Bouyid v. Belgium* [GC], no. 23380/09, § 82, ECHR 2015).

83. In the present case the applicants argued that their ill-treatment was evidenced by the second applicant's hospitalisation following the alleged events.

84. In this context, the Court observes that the second applicant had been suffering from chronic hypertension and had already been hospitalised with a similar diagnosis in the past, in particular, from 25 to 28 April 2014, that is shortly before the alleged events (see *Yunusova and Yunusov v. Azerbaijan*, no. 59620/14, § 33, 2 June 2016). In these circumstances, the Court finds that the above-mentioned element alone is insufficient to give rise to a *prima facie* case of ill-treatment at the hands of the police.

85. Having regard to the parties' submissions and all the material in its possession, the Court considers that the evidence before it does not enable it to find beyond reasonable doubt that the applicants were subjected to ill-treatment as alleged (see *Chumakov v. Russia*, no. 41794/04, §§ 103-04, 24 April 2012, and contrast *Gäfgen v. Germany* [GC], no. 22978/05, §§ 94-95, ECHR 2010).

86. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

87. Relying on Article 5 of the Convention the applicants complained of the unlawfulness of their deprivation of liberty from 28 to 29 April 2014. They further complained that their arrest and detention effected within the framework of criminal proceedings against them had not been based on a reasonable suspicion nor been justified. The applicants also complained of the lack of effective judicial review of the lawfulness of their detention. The relevant parts of Article 5 of the Convention read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (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;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

88. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Alleged breach of Article 5 § 1 on account of the applicants' deprivation of liberty from 28 to 29 April 2014

(a) The parties' submissions

89. The applicants complained that their arrest at the airport and the restriction of their freedom of movement from 28 to 29 April 2014 had amounted to deprivation of liberty within the meaning of Article 5. They further argued that their deprivation of liberty had been contrary to the requirements of domestic law as there had been no decision authorising their detention.

90. The Government submitted that the applicants had not been "detained" by the authorities. They argued that the actions of the authorities had been aimed at securing the applicants for questioning, given that they had failed to appear before the investigating authorities despite having been summoned for questioning as witnesses in a criminal case. In support of their submissions, the Government enclosed copies of the summonses addressed to both applicants.

(b) The Court's assessment

91. The Court notes at the outset that the Government may be understood as arguing that the measures taken against the applicants did not amount to deprivation of liberty. However, it has not been disputed by the Government that throughout the events in question the applicants were under the exclusive control of the authorities and were not free in their movement. Specifically, both applicants were stopped at the airport at about 10.30 p.m. on 28 April 2014. The second applicant was under the control of the authorities until the moment of his hospitalisation during the night of 28 to 29 April 2014 while the first applicant was allowed to leave following the searches carried out in her apartment and the Association's office at about midnight on 29 April 2014 (see paragraph 19-24 above). In this connection, the Court reiterates that in order to determine whether there has been a deprivation of liberty within the meaning of Article 5, the context in which action was taken is an important factor to be taken into account. Where a passenger has been stopped by border officials at border control in an airport in order to clarify his or her situation and where this detention has not exceeded the time strictly necessary to comply with the relevant formalities, no issue arises under Article 5 of the Convention (see *Gahramanov v. Azerbaijan* (dec.), no. 26291/06, § 40, 15 October 2013). By contrast, in the present case the applicants were not stopped in the context of security checks to be carried out prior to admission to an aircraft, but were obliged to accompany the police for the purpose of questioning as witnesses in the context of the criminal proceedings against a third party.

Thus, having regard to the fact that the restriction of the applicants' freedom of movement lasted for many hours, excluded any possibility for them to leave and served the purpose of bringing them for questioning, the Court concludes that the applicants were deprived of their liberty within the meaning of Article 5 § 1 (see *Khodorkovskiy v. Russia*, no. 5829/04, § 134, 31 May 2011).

92. The deprivation of liberty was justified only if it complied with one of the permissible grounds for deprivation of liberty listed in sub-paragraphs (a) to (f) of Article 5 § 1. Having regard to the parties' submissions and to the fact that the applicants were not charged with any crimes at the time of the events, the present complaint falls to be examined under Article 5 § 1 (b) of the Convention (see *Iliya Stefanov v. Bulgaria*, no. 65755/01, § 74, 22 May 2008, and *Khodorkovskiy*, cited above, § 134).

93. Detention may be authorised under the second limb of Article 5 § 1 (b) in order to "secure the fulfilment of any obligation prescribed by law". This concerns cases where the law permits the detention of a person to compel him or her to fulfil a specific and concrete obligation already incumbent on him or her, and which he or she has until then failed to satisfy. In order to be covered by Article 5 § 1 (b), an arrest and detention must also be aimed at or directly contribute to securing the fulfilment of that obligation and not be punitive in character (see *S., V. and A. v. Denmark* [GC], nos. 35553/12 and 2 others, §§ 79-80, 22 October 2018).

94. Turning to the present case, the Court notes that the Government argued that the applicants had failed to appear before the investigating officer for questioning, which was not disputed by the applicants. In this connection, the Court reiterates that the statutory obligation to give evidence as a witness could be regarded as sufficiently specific and concrete for the purposes of Article 5 § 1 (b) (see, in particular, *Iliya Stefanov*, cited above, §§ 73-75).

95. However, as the Court has held on many occasions, Article 5 § 1 of the Convention requires that any deprivation of liberty be "lawful", which includes the condition that it must be effected "in accordance with a procedure prescribed by law". The Convention here essentially refers back to national law and states the obligation to conform to the substantive and procedural rules thereof, but it requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness (see *Witold Litwa v. Poland*, no. 26629/95, §§ 72-73, ECHR 2000‑III).

96. In the present case the procedure under Article 178 of the CCrP, of which the applicants were warned in the summonses served on them, provides that bringing a person by force with a view to conducting an investigative measure with his or her participation must be carried out in accordance with a reasoned decision of an investigating body or a court. However, it does not appear that there was a decision taken in this context

ordering the applicants' escort for questioning. The Government has not argued otherwise. In these circumstances, the applicants' deprivation of liberty cannot be deemed as "lawful" within the meaning of Article 5 § 1.

97. There has accordingly been a violation of Article 5 § 1 of the Convention on account of the applicants' deprivation of liberty from 28 to 29 April 2014.

2. Alleged breach of Article 5 §§ 1 and 3 of the Convention on account of the lack of reasonable suspicion and the domestic courts' failure to give relevant and sufficient reasons for the applicants' continued detention between 30 July 2014 and an unspecified date in 2015

(a) The parties' submissions

98. The applicants complained that there had been no "reasonable suspicion" that they had committed a criminal offence as the charges brought against them were not supported by any evidence. They also argued that the domestic courts had failed to provide "relevant and sufficient" reasons justifying their pre-trial detention between 30 July 2014 and an unspecified date in 2015

99. The Government submitted that the applicants' arrest and detention had been based on suspicion that they had committed criminal offences. Such suspicion had been reasonable and had been supported by the evidence collected during the criminal investigation. The Government further argued that the applicants' pre-trial detention had been justified and had been based on sufficient and relevant reasons.

100. The third-party comments submitted by the Council of Europe Commissioner for Human Rights, the Human Rights House Foundation and Freedom Now concerned, in particular, the situation of human-rights defenders in Azerbaijan and the difficulties faced by NGOs as a result of the recent legislative amendments. The third-party comments were similar to those made in *Rasul Jafarov,* no. 69981/14, §§ 99-113, 17 March 2016.

(b) The Court's assessment

101. The Court notes that the issues raised by the applicants' complaints are subject of the Court's well-established case-law. The Court will examine these complaints on the basis of the relevant general principles set out, in particular, in the cases of *Rashad Hasanov and Others v. Azerbaijan,* nos. 148653/13 and 3 others, §§ 91-96, 7 June 2018; *Mammadli v. Azerbaijan*, no. 47145/14, §§ 48-53, 19 April 2018; *Rasul Jafarov*, cited above, §§ 114-118; and *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, §§ 87-89, 22 May 2014.

102. In the light of these principles, the Court's task is to satisfy itself that the applicants' arrest and pre-trial detention were based on a reasonable suspicion that they had committed the offences of which they were accused

(see *Merabishvili v. Georgia*, no. 72508/13, § 187, 14 June 2016). The Court observes that the applicants' arrest and pre-trial detention were based on charges relating to two separate sets of facts attributed to them: the first set of facts formed the basis for the charge of high treason, while the second one concerned various charges in relation to the grants received by the applicants through NGOs. In order to assess the existence of a reasonable suspicion for the applicants' arrest and detention, the Court will proceed to examine the facts giving rise to the above charges in turn.

(i) As regards the charge of high treason against both applicants

103. The Court observes at the outset that it was a well-known fact, both domestically and abroad, that since 2002 onwards the applicants had been involved together with their Armenian counterparts in joint projects which were aimed at promoting dialogue between the Azerbaijani and Armenian civil societies and which was known as "people's diplomacy". However, the criminal case, which had been initiated by the prosecution against the applicants, set out a suspicion that the projects run by the applicants within the framework of "people's diplomacy" were in fact a cover-up under which they had cooperated with various agents of the Armenian secret services to the detriment of the national security of Azerbaijan. They had allegedly received large sums of money in order to recruit persons for espionage and had recruited R.M., who had allegedly provided information on the location of military bases and strategic infrastructure in Azerbaijan during his meetings with those agents.

104. The Court's task is therefore to verify whether there was sufficient objective evidence that could lead an objective observer to reasonably believe that the applicant might have committed the acts alleged by the prosecuting authorities (see *Ilgar Mammadov*, cited above, § 94).

105. In this connection, the Court notes that the applicants consistently claimed before the domestic courts and this Court that the authorities had failed to produce any evidence in support of the suspicion that they had committed this offence. The Government argued on the contrary that "this accusation [had been] supported by evidence collected during the criminal investigation". However, the Court notes that unspecified evidence referred to by the Government did not appear in the material available before it, either in the official documents of the prosecuting authorities or the decisions of the domestic courts (see *Rashad Hasanov and Others*, and *Ilgar Mammadov*, both cited above, § 105 and § 96 respectively; and compare *Tanrıkulu and Others v. Turkey*, nos. 29918/96 and 2 others, § 30, 6 October 2005). Moreover, the applicants' complaints before the domestic courts concerning the lack of any evidence in support of this accusation were completely ignored by the latter. In this regard, the Court reiterates that in accordance with the decision of the Plenum of the Supreme Court of 3 November 2009 domestic courts were required to subject prosecution

authorities' applications for remand in custody to close scrutiny and to verify the existence of a suspicion against the accused by making use of their power under Article 447 § 5 of the CCrP to request and review the "initial evidence" in the prosecution's possession (see paragraph 78 above). However, it appears this was not done in the present case (compare *Rashad Hasanov and Others*, and *Ilgar Mammadov*, both cited above, § 105 and § 97 respectively).

106. Furthermore, in the proceedings before the Court the Government did not present any material whatsoever that would allow to conclude that there was a reasonable suspicion that the applicants might have committed the crimes they were accused of (*see Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, § 48, 8 October 2009, and compare *Merabishvili*, cited above, § 187).

107. Having regard to the above, the Court finds that there is nothing in the material before it that would satisfy an objective observer to conclude that the applicants may have committed these acts. The Court therefore concludes that it has not been demonstrated that during the period under consideration the applicants were deprived of their liberty on a "reasonable suspicion" of having committed the criminal offence of high treason.

(ii) As regards the charges related to receipt and operation of grants by the first applicant and their misuse by both applicants

108. The Court observes that the charges brought against the applicants in relation to the grants received through NGOs are similar to a large extent to those against the applicant in the case of *Rasul Jafarov* (cited above, §§ 16 and 30). Notably, as far as the charges of illegal entrepreneurship and large-scale tax evasion are concerned, the misconduct attributed to the first applicant stemmed from the failure to register grants received through NGOs. This failure, in the authorities' view, resulted in *de facto* commercial activity. In this connection, the Court restates that it had already examined similar acts giving rise to the above charges in the case of *Rasul Jafarov* (ibid.) in which the Court held as follows:

> "128. ... Having regard to the relevant legislation (see paragraphs 69 and 71 above), the Court notes that the requirement to submit grants for registration to the Ministry of Justice was merely a reporting requirement, and not a prerequisite for legal characterisation of the received financial assistance as a "grant". Failure to meet this reporting requirement was an administrative offence specifically proscribed by Article 223-1.1 of the CAO and punishable by a fine (only after February 2014 in the case of individual recipients). Non-compliance with this reporting requirement had no effect on the nature of a grant agreement defined and regulated by Articles 1.1 and 4.1 of the Law on Grants (see paragraphs 68-69 above), or on the characterisation of the activities for which the grant was used as non-commercial.
>
> 129. However, from the documents in the case file it appears that, apart from relying on the applicant's alleged failure to comply with the reporting requirement to register the grants, which in itself was not criminalised under the domestic law, the prosecuting authorities never demonstrated the existence of any information or

> evidence showing that the applicant might have used the money for generating profit or for purposes other than those indicated in the grant agreements, or that the purposes indicated in the grant agreements were both commercial and illegal. Likewise, the Government failed to demonstrate that any other witness statements, documents or other evidence or information existed which could serve as the basis for the suspicion that the applicant had engaged in criminal activities. Furthermore, it has not been demonstrated that any such evidence was ever presented by the prosecuting authorities to the domestic courts which ruled on the applicant's continued detention.
>
> 130. In such circumstances, the Court finds that the applicant could not have been reasonably suspected of having committed the criminal offence of "illegal entrepreneurship" under Article 192.2.2 of the Criminal Code, because there were no facts, information or evidence showing that he had engaged in commercial activity or the offence of "tax evasion" under Article 213 of the Criminal Code, as in the absence of such commercial activity there could be no taxable profit under the simplified regime ..."

109. The Court has no reason to hold otherwise in the present case as the facts relied on by the domestic authorities to press charges at issue were identical in nature and there is nothing in the Government's submissions which would enable the Court to reach a different conclusion.

110. As regards the charge of large-scale fraud, the Court observes that the first applicant was accused of taking possession, by abuse of trust, of a certain part of the money entrusted to her by donors under the grant agreements and placing together with the second applicant on various dates those sums in their personal joint bank accounts. However, the Court notes that this accusation was not supported by any material. Notably, it remains unclear why the withdrawal of these sums from the NGO bank account was considered by the prosecution as a fraudulent activity, and not, for example, as payments of fees and remuneration in relation to the administration and management of the relevant projects by the first applicant. In this context, the Court notes that it does not appear from the case file that the donors of the relevant projects ever complained that the money paid under the grant agreements had not been properly spent for the purposes for which it had been allocated and that it had been misused by the first or second applicant by way of "abuse of trust or deceit", which was one of the constituent elements of the criminal offence of "fraud" under Article 178 (see paragraph 75 above). Nor was there any other evidence which would have demonstrated the presence of such an element in order to form a reasonable suspicion that the applicants might have committed the above criminal act by abusing the trust of the donors (compare *Rasul Jafarov*, cited above, § 132, as regards the charge of embezzlement).

111. As to the charge of falsification of official documents, the first applicant was accused of inserting false information in various financial documents. Likewise, the Court notes that there is nothing in the domestic decisions or the Government's submissions which would support this accusation and satisfy an objective observer that this information might have been false (compare *Rasul Jafarov*, cited above, § 132).

(iii) Conclusion

112. Having regard to the above considerations and the Court's case law on the matter, the Court finds that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention. The Court therefore concludes that during the period between 30 July 2014 and an unspecified date in 2015 the applicants were deprived of their liberty in the absence of a "reasonable suspicion" of them having committed a criminal offence.

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

114. The above finding makes it redundant to assess whether the reasons given by the domestic courts for the applicants' continued detention were based on "relevant and sufficient" grounds, as required by Article 5 § 3 of the Convention. Therefore, the Court does not consider it necessary to examine separately the applicants' complaints under Article 5 § 3 of the Convention (see *Rasul Jafarov*, cited above, § 135).

3. Alleged breach of Article 5 § 4 of the Convention on account of the lack of an effective judicial review of the lawfulness of the applicants' detention

(a) The parties' submissions

115. The applicants complained that they had not been afforded an effective judicial review of the lawfulness of their detention.

116. The Government, referring to the relevant provisions of the CCrP, contested that argument and argued that the applicants had had at their disposal an effective procedure by which they could have challenged the lawfulness of their detention.

(b) The Court's assessment

117. The Court notes that it has already found a violation of Article 5 § 4 of the Convention under similar circumstances in the case of *Rasul Jafarov* (cited above, §§ 140-42). In particular, as in the latter case, the domestic courts in the present case consistently failed to verify the existence of reasonable suspicion underpinning the applicants' arrest and detention despite the applicants' repeated complaints to this end and, by using vague and stereotyped formulae, they automatically endorsed the prosecution's applications without any genuine and independent review of the "lawfulness" of their detention. Having regard to its case-law on the subject, the Court considers that the applicants were not afforded proper judicial review of the lawfulness of their detention. Accordingly, there has been a violation of Article 5 § 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

118. The applicants complained under Article 6 § 2 of the Convention that the joint press statement of the Prosecutor General's Office and the Ministry of National Security had infringed their right to the presumption of innocence. Article 6 § 2 of the Convention provides as follows:

> "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

A. Admissibility

119. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

120. The applicants maintained their complaint.

121. The Government submitted that the joint press statement had had the aim of informing the public of the status of the criminal investigation and had not breached the applicants' right to the presumption of innocence. They noted that the statement had not depicted the applicants as criminals, but had rather indicated that there had been reasonable grounds to suspect the applicants of having committed the acts described in the statement.

2. The Court's assessment

122. The Court reiterates that the presumption of innocence will be violated if a judicial decision or a statement by a public official concerning a person charged with a criminal offence reflects an opinion that he is guilty before he has been proved guilty according to law. It suffices, even in the absence of any formal finding, that there is some reasoning suggesting that the court or the official regards the accused as guilty. A fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question. The Court has consistently emphasised the importance of the choice of words by public officials in their statements before a person has been tried and found guilty of a particular criminal offence (see *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 218, 9 November 2010).

123. The Court points out that it has already found a breach of Article 6 § 2 of the Convention in a number of cases against the respondent State on

account of the choice of words used by the authorities in their statements to the press which prejudged the assessment of the facts by the courts and encouraged the public to believe the applicants guilty before they had been proved guilty according to law (see *Ilgar Mammadov*, cited above, § 127; *Muradverdiyev v. Azerbaijan*, no. 16966/06, §§ 107-08, 9 December 2010; and *Farhad Aliyev*, cited above, § 225).

124. The same considerations apply in the circumstances of the present case having regard to the similar choice of words used by the authorities in the impugned joint statement (see paragraph 71 above) and in the above cases, where the Court found them as problematic from the standpoint of Article 6 § 2. The joint statement in the present case contained an affirmation that it had been established that the applicants, as a result of their actions, had committed acts which constituted the *corpus delicti* of specific crimes provided for under domestic law. The Court would stress in this regard that a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual committed the crime in question (see *Farhad Aliyev*, cited above, § 218).

125. The Court takes note of the Government's submission that the purpose of the impugned statement was to inform the public about the status of the criminal investigation against the applicants and accepts that the fact that the applicants are well-known civil society activists required the authorities to keep the public informed of the applicants' arrest and the ensuing criminal proceedings. However, this duty to inform the public cannot justify all possible choices of words, but has to be carried out with a view to respecting the right of the suspects to be presumed innocent (see *Peša v. Croatia*, no. 40523/08, § 142, 8 April 2010). The Court considers that the statement, assessed as a whole, was not made with the necessary discretion and circumspection. Notably, as regards the fact, invoked by the Government, that the statement ended by referring to the existence of a reasonable suspicion, the Court notes that this reference was made twice in the statement. The first reference to the existence of a reasonable suspicion was indicated only with respect to one of the episodes imputed to the first applicant as regards "taking possession by abuse of trust" as opposed to other episodes incriminated to both applicants which were presented in the statement as established facts. As to the general reference to the existence of a reasonable to charge the applicants with the crimes, the Court notes this wording was negated by the preceding remarks in the statement which presented the applicants' involvement in the commission of those crimes as an established fact, without any qualification or reservation, (see, *mutatis mutandis*, *Ilgar Mammadov*, § 127). Moreover, the reference to the existence of a suspicion against the applicants was not indicated at the beginning of the statement so that an external reader might understand that the applicants were merely suspected of having committed those crimes, but

rather put in the end of the statement when a reader had already formed a view that the applicants had committed those crimes. Thus, the overall manner in which the statement was formulated gave the impression that the applicants were regarded as guilty before being so proved according to law.

126. There has therefore been a violation of Article 6 § 2 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE INTRUSION ON THE FIRST APPLICANT

127. The first applicant complained under Article 3 of the Convention that when using the toilet and in a state of undress a male officer had intruded on her. Having the power to decide on the characterisation to be given in law to the facts of a complaint (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), the Court considers that in the circumstances of the present case the applicants' complaint falls to be examined under Article 8, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

128. The first applicant reiterated her complaint. In support of her allegations she submitted copies of the video recordings described in paragraphs 21 - 23 above.

129. The Government argued that the first applicant had failed to produce any evidence in support of her allegations. As regards the video recordings, the Government indicated that those videos had never been submitted before the domestic courts and therefore any reference to those videos was inadmissible.

B. The Court's assessment

1. Admissibility

(a) Applicability of Article 8

130. The Court notes that the facts of the case as regards the first applicant's complaint are in dispute between the parties. The Government asserted that the first applicant's allegations were unsubstantiated. At the

same time, the first applicant submitted video recordings which showed the moment when the applicant, after having used the toilet in a neighbour's flat, returned to the courtyard accompanied by a male police officer and immediately complained of the police officer's intrusion. The video also showed that the superior officer to whom she complained had condoned the intrusion by indicating that the police officer in question had been protecting the first applicant from self-harm (see paragraph 23 above). The Government did not dispute the authenticity of these video recordings.

131. In view of the above, the Court finds that there is *prima facie* evidence in favour of the first applicant's account of events and therefore accepts her allegations as credible.

132. As to the Government's argument that the video recordings furnished by the first applicant were inadmissible, the Court emphasises that it is uncontested that the intrusion of which the first applicant complaints had been clearly raised in the proceedings initiated before the Yasamal District Court (see paragraph 31 above), whose findings were appealed to the Baku Court of Appeal (see paragraph 33 above). It reiterates that in the proceedings before it, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005 VII). In the present case, the Court notes that in the domestic proceedings initiated by the applicants, they submitted before the national courts a list of web addresses where the video recordings of the events had been posted (see paragraph 31 above). There is nothing in the national courts' decisions suggesting that they were precluded from examining those video recordings or that the latter were inadmissible on any other procedural grounds: the domestic courts' decisions were totally silent in this regard.

133. Thus, having regard to the parties' submissions and the materials available before it, the Court proceeds on the basis that a male officer intruded in the toilet while the first applicant was using its facilities and observed her in a state of undress.

134. In this context, the Court reiterates that the concept of "private life" is a broad term not susceptible to exhaustive definition (*see Bensaid v. the United Kingdom*, no. 44599/98, § 47, ECHR 2001‑I; *Bărbulescu v. Romania* [GC], no. 61496/08, § 70, 5 September 2017 (extracts); and *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018), which covers also the physical and psychological integrity of a person (*Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017). Moreover, a person's body concerns an intimate aspect of private life (see *Y.F. v. Turkey*, no. 24209/94, § 33, ECHR 2003‑IX).

135. Accordingly, the Court finds that the intrusion of a male officer into the toilet resulting in the first applicant being exposed to him in a state of undress clearly amounted to an interference with the applicant's right to respect for her private life.

(b) Conclusion as to admissibility

136. In view of the above considerations, the Court concludes that Article 8 is applicable and the first applicant's complaint is *compatible ratione materiae* with the provisions of the Convention.

137. The Court further notes that the applicants' complaint is not manifestly ill founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

138. In order to be justified under Article 8 § 2 of the Convention, any interference must be in accordance with the law, pursue one of the listed legitimate aims, and be necessary in a democratic society.

139. The Court will proceed on assumption that the interference was prescribed by law and pursued a legitimate aim, although it is not necessary to determine these issues in the present case since, for the specific reasons outlined below, the impugned interference was not "necessary in a democratic society.

140. The Court observes that in the domestic proceedings initiated by the applicants, the first applicant's allegations about the intrusion of the police officer were not examined on the merits since they were dismissed by the national courts as being unfounded (see paragraphs 32-33 above).

141. However, the Court notes that the evidence available in the case-file shows that that a male officer intruded into the toilet while the first applicant was using its facilities (see paragraph 133). The actions of the officer in question were justified by his superior by security considerations, specifically in order to allegedly prevent the first applicant from harming herself. However, it does not appear from the facts of the case that there was an emergency situation requiring the officer in question to take any imminent action in order to protect the applicant. Nor is there anything to suggest that the first applicant presented a risk of self-harm. The Government did not put forward any explanation in this context or provide evidence regarding the incident, such as testimony from the neighbour whose toilet the first applicant was using.

142. In these circumstances, the Court considers that the deliberate and unjustified intrusion of a male officer on the first applicant while using the toilet and in a state of undress cannot be regarded as "necessary in a democratic society".

143. There has therefore been a violation of Article 8 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION ON ACCOUNT OF THE APPLICANTS' SEARCH

144. The applicants complained of the searches of their persons at the airport as well as of their home and of the Association's office and seizure of various materials as a result. They relied on Article 8 of the Convention which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

145. The Court notes that this part of the application 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

146. The applicants argued that their search at the airport, as well the searches of their home and of the Association's office which took place on 29-29 April 2014, and seizure of various documents and objects, including devices containing electronic data, had constituted an interference with their right to respect for private and family life, home and correspondence which had not been prescribed by law and had not been necessary in a democratic society. In particular, according to the applicants, the search of their handbag and luggage at the airport had been carried out in the absence of a court order contrary to the requirements of domestic law. As regards the searches at their home and the Association's office, they submitted that the orders issued by the domestic court in this context had been vague and not supported by any material.

147. The Government submitted that the searches had been carried out within the framework of the criminal investigation into the crime of high treason and had been in accordance with domestic law. According to the Government, the examination of the applicants' luggage at the airport had not been a "search" as such, but an investigative measure provided by Article 236 of the CCrP (inspection), which had not required a court order. As regards the searches of the applicants' apartment and the Association's

office, they had been carried out by virtue of a court decision in accordance with domestic law. They further argued that the interference with the applicant's rights under Article 8 had been necessary in the interests of national security.

2. The Court's assessment

(a) Whether there has been an interference

148. The Court finds, and this is not in dispute between the parties, that the inspection of the applicants' luggage and handbags, regardless of its classification under domestic law, as well as the searches of their home and the Association's offices and seizure of various materials constituted an interference with the applicants' "private life", "home" and "correspondence" within the meaning of Article 8 § 1 of the Convention (see *Ivashchenko v. Russia*, no. 61064/10, §§ 59-70, 13 February 2018; *Belousov v. Ukraine*, no. 4494/07, § 103, 7 November 2013; and *Rozhkov v. Russia (no. 2)*, no. 38898/04, § 104, 31 January 2017, with further references). The question therefore remains whether that interference was justified under paragraph 2 of that provision.

(b) Whether the interference was justified

149. The Court reiterates that the essential object and purpose of Article 8 of the Convention is to protect the individual against arbitrary interference by the public authorities (see, for example, *Niemietz v. Germany*, 16 December 1992, § 31, Series A no. 251 B, with further references). Such interference is in breach of Article 8 of the Convention unless it was "in accordance with the law", pursued a legitimate aim as defined in the second paragraph of that Article, and was "necessary in a democratic society" to achieve that aim.

150. As regards the question of whether the interference was "in accordance with the law", the Court observes that the applicants disputed the lawfulness of the interference, in particular, as regards the inspection of their luggage and handbags. However, the Court considers that in the light of the particular circumstances of the present case, it is not necessary to address this issue since in any event the impugned interference was in breach of Article 8 for other reasons outlined below.

151. The Court reiterates that the exceptions to the individual's right to respect for his or her private and family life, his or her home and his or her correspondence listed in Article 8 § 2 must be narrowly interpreted. The enumeration of the exceptions as listed in Article 8 § 2 is exhaustive and their definition is restrictive. For it to be compatible with the Convention, a limitation of this right must, in particular, pursue an aim that can be linked to one of those listed in this provision (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 182, 20 September 2018).

152. In the present case, the Government argued that the searches and seizures in question had been aimed at investigating the criminal case against R.M., which can be linked to the aim of prevention of crime within the meaning of Article 8 § 2. As regards the aim of protection of national security referred to by the Government, while they did not make any specific submissions in this regard, the Court notes that the above criminal case within which the impugned searches and seizures had been carried out concerned the crime of high treason.

153. In this connection, as far as the inspection of the applicants' belongings at the airport is concerned, the Court finds it important to emphasise that, this measure was not carried out in the context of customs controls for "goods" or in the context of security checks prior to admission to an aircraft (compare *Ivashchenko*, cited above, § 68), but, as noted above, in the context of criminal proceedings against a third party. Notably, the inspection of the applicants' luggage and handbags at the airport and the seizure of various documents, including their passports, were ordered by the investigator, who justified this measure by "the necessity which had emerged in the context of the criminal case against [R.M.]" (see paragraph 19 above). As regards the searches and seizures at the applicants' home and at the Association's office, the Court observes that they were carried out on the basis of the decision of the Yasamal District Court. The District Court authorised those searches on the grounds that "[R.M. had been] in a close relationship with the applicants" and had "cooperated with the Association" (see paragraphs 17-18 above).

154. However, in the Court's view, the above unspecified "emerging necessity" within the criminal case against R.M. and the mere fact that the latter was in close relationship with the applicants and had cooperated with the Association cannot be considered, in the absence of any concrete purpose of those measures, as reasonable grounds for suspecting that evidence relevant for the investigation of that criminal case might have been found as a result of those searches (compare *Buck v. Germany*, no. 41604/98, § 41, ECHR 2005 IV where the search and seizure order was aimed at disclosing the identity of the person liable for the speeding offence). The Court finds that it has not been explained why the domestic authorities considered that carrying out of the impugned searches and seizures would help to further the investigation in the criminal case against R.M. and/or to protect national security. Nor did the Government submit before the Court any specific information to that end.

155. Furthermore, the Court cannot ignore the fact that several days prior to the applicants' arrest at the airport and the searches carried out the authorities instituted criminal proceedings in connection with alleged irregularities in the financial activities of a number of NGOs following which several notable NGO activists were arrested, whose offices and premises were also searched (see *Rasul Jafarov*, cited above, §§ 11 and 15).

Therefore, in the light of the specific context of the present case and the lack of any concrete reasons put forward either in the domestic or in the Convention proceedings justifying the measures at stake, the Court finds that the Government failed to convincingly demonstrate that the authorities had been guided by the legitimate aims relied on, that is to say the investigation of the criminal case against R.M. and the protection of national security (see, *mutatis mutandis*, *Nolan and K. v. Russia*, no. 2512/04, §§ 70-75, 12 February 2009).

156. Thus, having regard to the restrictive definition of the exceptions provided by Article 8 § 2, the Court finds that the Government failed to demonstrate that the interference complained of pursued the legitimate aims of prevention of the crime of high treason and protection of national security within the meaning of this Article (compare *Aliyev*, cited above, § 186). The Government has not put forward and the Court does not see any other justification for the interference at issue.

157. Accordingly, the Court finds that, in the particular circumstances of the present case, the search and seizure at the applicants' home and the Association's offices as well as the inspection of the applicants' luggage and handbags at the airport and seizure of various objects and documents, including the applicants' passports, did not pursue any of the legitimate aims enumerated in paragraph 2 of Article 8.

158. Where it has been shown that an interference did not pursue a "legitimate aim" it is not necessary to investigate whether it was "necessary in a democratic society" (see *Karajanov v. the former Yugoslav Republic of Macedonia*, no. 2229/15, § 76, 6 April 2017).

159. There has therefore been a violation of Article 8 of the Convention.

VI. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4

160. The applicants complained that the seizure of their passports and their ensuing prevention from leaving the country had amounted to a violation of Article 2 of Protocol No. 4 which provides:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

161. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

162. The Court observes that there was no formal decision taken by the authorities to impose a travel ban on the applicants. At the same time, they were *de facto* unable to leave the country as a result of the seizure of their passports. In this connection, the Court reiterates that a measure by means of which an individual is dispossessed of an identity document such as, for example, a passport, amounts to an interference with the exercise of liberty of movement (see *Napijalo v. Croatia*, no. 66485/01, § 69, 13 November 2003, with further references). However, the Court notes that it has already found under Article 8 that the search and seizure of various documents, including the applicants' passports, did not pursue a "legitimate aim". In these circumstances, the Court finds that there is no need to examine separately the applicants' complaint under Article 2 of Protocol No. 4 to the Convention (compare *Penchevi v. Bulgaria*, no. 77818/12, § 77, 10 February 2015).

VII. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

163. The applicants complained that the freezing of their bank accounts had been unlawful. They relied on Article 1 of Protocol No. 1 which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

164. The Court notes that this part of the application 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

165. The applicants maintained their complaint by arguing that their bank accounts had been frozen in breach of the requirements of domestic

law. In particular, they alleged that the freezing of their bank accounts had been carried out without a judicial warrant contrary to Article 249 of the CCrP.

166. The Government did not make any submissions in respect of this complaint.

2. The Court's assessment

167. The Court notes that it was not disputed by the Government that there had been an interference with the applicants' property rights. In this context, the Court reiterates that the freezing of bank accounts has to be regarded as a measure of control of the use of property and that any control of the use of property by a public authority should be lawful (see *International Bank for Commerce and Development AD and Others v. Bulgaria*, no. 7031/05, § 123, 2 June 2016, and *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, §§ 92-93, 24 February 2011, with further references).

168. Turning to the present case the Court observes that the applicants' bank accounts were frozen within the framework of the criminal case against a third party. In this connection, the Court notes that by virtue of Article 249 of the CCrP property, including bank deposits, could be frozen only if the evidence collected provided grounds for doing so and, as a general rule, on the basis of a reasoned decision of a court. At the same time, according to the same Article of CCrP, in cases of urgency where there is a risk that the offender might destroy the property or otherwise obstruct the administration of justice, property could be frozen on the basis of a reasoned decision of an investigating authority. However, it does not appear that such a reasoned decision was taken in the present case, either by a court or an investigator, which would have demonstrated an existence of reasonable grounds to freeze the applicants' bank accounts. They had been frozen on the basis of a simple request addressed by the prosecuting authorities to the bank by mere reference to the "emerging necessity" within a criminal case. Such a request does not appear to be in compliance with the above-mentioned requirements of domestic law.

169. The above conclusion that the interference with the applicants' property rights was unlawful makes it unnecessary to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Iatridis v. Greece* [GC], no. 31107/96, § 62, ECHR 1999-II).

170. There has therefore been a violation of Article 1 of Protocol No. 1 to the Convention.

VIII. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 AND ARTICLE 2 OF PROTOCOL No. 4

171. The applicants complained that they had no effective remedy by which to challenge the seizure of their passports, their prevention from leaving the country and the freezing of their bank accounts. They relied on Article 13 of the Convention, which provides as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

172. The Court notes that this part of the application 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

173. The applicants maintained their complaint by arguing that they had had no effective remedy in relations to their complaints under Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

174. The Government did not make any submissions in respect of this complaint.

2. The Court's assessment

175. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured. The effect of that provision is thus to require the provision of a domestic remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 197, ECHR 2012).

176. Having declared the applicants' complaints under Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 admissible, the Court finds that they were arguable. The applicants were therefore entitled to an "effective" domestic remedy within the meaning of Article 13.

177. In this context, the Court observes that the domestic courts refused to examine on the merits the applicants' complaints concerning the seizure of their passports and the freezing of their bank accounts because such actions by the investigating authorities were not amenable to judicial review (see paragraphs 36 and 42 above). The Government did not argue otherwise.

178. In view of the foregoing, the Court concludes that the applicants did not have an effective remedy in relation to their complaints under Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4 (compare *Smirnov v. Russia*, no. 71362/01, § 64, 7 June 2007). There has, accordingly, been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4.

IX. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 5

179. The applicants complained under Article 18 of the Convention that between 30 July 2014 and an unspecified date in 2015 their right to liberty 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

180. The Court notes that this part of the application 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

181. The applicants maintained that the specific circumstances of their case demonstrate that their arrest and pre-trial detention had been intended to punish and silence them as human-rights defenders and civil-society activists.

182. The Government, relying on *Khodorkovskiy,* cited above, and *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, 25 July 2013, submitted that the restrictions imposed by the State in the present case had not been applied for any purpose other than one envisaged by Article 5 and strictly for the proper investigation of serious criminal offences allegedly committed by the applicants.

183. Submissions by the third parties, which pertain to both the complaints under Articles 5 and 18 of the Convention, are referred to in paragraph 100 above.

2. The Court's assessment

184. The Court will examine the applicants' complaint in the light of the relevant general principles set out by the Grand Chamber in its judgment in *Merabishvili* (cited above, §§ 287-317).

185. The Court notes at the outset that it has already found that the applicants' arrest and pre-trial detention between 30 July 2014 and an unspecified date in 2015 were not carried out for a purpose prescribed under Article 5 § 1 (c) of the Convention, as the charges against them were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention (see paragraph 112 above). Therefore, no issue arises in the present case with respect to a plurality of purposes, where a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention (compare *Merabishvili*, cited above, §§ 318-54).

186. However, the mere fact that the restriction of the applicants' right to liberty did not pursue a purpose prescribed by Article 5 § 1 (c) is not in itself a sufficient basis to conduct a separate examination of a complaint under Article 18 unless the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (see *Merabishvili*, cited above, § 291). Therefore, it remains to be seen whether there is proof that the authorities' actions were actually driven by an ulterior purpose.

187. In this connection, 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.

188. For the reasons set out below the Court finds that the present case constitutes a part of this pattern since the combination of the relevant case-specific facts in the applicants' case is similar to that in the previous ones, where proof of an ulterior purpose derived from a juxtaposition of the lack of suspicion with contextual factors.

189. Firstly, as regards the applicants' status, the Court notes that it is not disputed between the parties that the first applicant is a well-known human-rights defender and the second applicant was closely involved in her activities.

190. Secondly, as the Court has found above, the applicants were charged with serious criminal offences whose core constituent elements could not reasonably be found in the existing facts.

191. Thirdly, the Court notes that the applicants' arrest was accompanied by stigmatising statements made by public officials against the

local NGOs and their leaders, including the applicants, who were labelled as "traitors" (see paragraph 72 above). These statements did not simply concern an alleged breach of domestic legislation on NGOs and grants, but rather had the purpose of delegitimising their work.

192. Fourthly, the general context of the increasingly harsh and restrictive legislative regulation of NGO activity and funding cannot be simply ignored in a case like the present one, where such a situation has led to NGO activists being prosecuted for alleged failures to comply with legal formalities of an administrative nature while carrying out their work.

193. Fifthly, the applicant's situation should be viewed against the backdrop of arrests of other notable civil society activists and human-rights defenders who have been detained and charged to a large extent with similar criminal offences (see paragraph 6 above).

194. Thus, the totality of the above circumstances indicates that the authorities' actions were driven by improper reasons and the actual purpose of the impugned measures was to silence and to punish the applicants for their NGO activities. In the light of these considerations, the Court finds that the restriction of the applicants' liberty between 30 July 2014 and an unspecified date in 2015 were imposed for purposes other than those prescribed by Articles 5 § 1 (c) of the Convention.

195. There has accordingly been a violation of Article 18 of the Convention taken in conjunction with Article 5.

X. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

196. The applicants further complained under Article 11 that their right to freedom of association had been violated on account of their arrest and detention. Article 11 of the Convention provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

197. 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.

198. However, having regard to its conclusions under Article 5 §§ 1 and 4 of the Convention and Article 18 of the Convention with regard to the

same set of facts, the Court considers that it is unnecessary to examine separately the complaint under Article 11 of the Convention (compare *Rasul Jafarov*, cited above, § 170).

XI. COMPLIANCE WITH THE OBLIGATION UNDER ARTICLE 34 OF THE CONVENTION

199. The applicants complained that the suspension of their representative's licence to practise law and the impossibility to meet with him while in prison had amounted to a breach of their right of individual petition under Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

A. The parties' submissions

200. The submissions made by the parties are identical to those made in respect of the same complaint raised in *Hilal Mammadov v. Azerbaijan*, no. 81553/12, §§ 111-14, 4 February 2016, and *Rasul Jafarov*, cited above, §§ 172-75.

B. The Court's assessment

201. In the cases of *Hilal Mammadov* (cited above §§ 118-26) and *Rasul Jafarov* (cited above, §§ 179-86), having examined an identical complaint based on the same facts, the Court found that the respondent State had failed to comply with its obligations under Article 34 of the Convention. Having regard to the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

202. The Court therefore finds that the respondent State has failed to comply with its obligations under Article 34 of the Convention.

XII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

203. 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

204. The applicants claimed 20,000 euros (EUR) each in respect of pecuniary and non-pecuniary damage on account of the loss of earnings and mental suffering caused by the measures taken against them.

205. The Government submitted that the amounts claimed by the applicant were unsubstantiated and excessive.

206. The Court notes that the applicants did not submit any documents in support of the part of the claim concerning the loss of earnings. However, the Court accepts that the applicants suffered pecuniary and non-pecuniary damage as a result of the violations found (see *Rasul Jafarov*, cited above, § 193). 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 in respect of both pecuniary and non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

207. The applicants claimed EUR 12,090 for the legal fees incurred in the domestic proceedings and before the Court, that is to say EUR 9,990 for Mr K. Bagirov's legal services and EUR 2,100 for Mr J. Javadov's legal services. They also claimed EUR 328.14 for postal expenses and EUR 3,058 for translation costs (of which EUR 820 was paid for translation of the application forms and attached documents thereto). In support of their claims they submitted copies of contracts for the legal and translation services, a detailed breakdown of the work done and receipts for postal services.

208. The Government submitted that the claims for costs and expenses had not been properly substantiated by relevant supporting documents and had been excessive. In particular, they argued that the sum of EUR 820 claimed for the translation of the application forms and their annexes had not been necessarily incurred.

209. 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 and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the total sum of EUR 11,438, plus any tax that may be chargeable on that amount, to cover the following costs and expenses:

- EUR 7,000 for the legal services provided by Mr Bagirov;
- EUR 2,100 for the legal services provided by Mr Javadov;
- EUR 2,338 in postal and translation expenses.

C. Default interest

210. 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 complaints under Article 3 concerning the applicants' ill-treatment during their transfer on the night of 28 to 29 April 2014 inadmissible and the remainder of the application admissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the applicants' deprivation of liberty from 28 to 29 April 2014;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the lack of reasonable suspicion for the applicants' arrest and pre-trial detention between 30 July 2014 and an unspecified date in 2015;

4. *Holds* that there is no need to examine separately the applicants' complaint under Article 5 § 3 of the Convention;

5. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

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

7. *Holds* that there has been a violation of Article 8 of the Convention on account of the intrusion on the first applicant while using the toilet and in a state of undress;

8. *Holds* that there has been a violation of Article 8 of the Convention on account of the searches and seizures to which both applicants were subjected;

9. *Holds* that there is no need to examine separately the applicants' complaint under Article 2 of Protocol No. 4 to the Convention;

10. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention on account of the freezing of the applicants' bank accounts without a lawful basis;

11. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4;

12. *Holds* that there has been a violation of Article 18 of the Convention taken in conjunction with Article 5 of the Convention on account of the restriction of the applicants' liberty between 30 July 2014 and an unspecified date in 2015;

13. *Holds* that there is no need to examine separately the complaint under Article 11 of the Convention;

14. *Holds* that the respondent Government has failed to comply with their obligations under Article 34 of the Convention;

15. *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 national currency at the rate applicable at the date of settlement:

(i) EUR 20,000 (twenty thousand euros euros), plus any tax that may be chargeable, to each applicant, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 11,438 (eleven thousand four hundred and thirty-eight euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(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;

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

Done in English, and notified in writing on 16 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik	Síofra O'Leary
Deputy Registrar	President