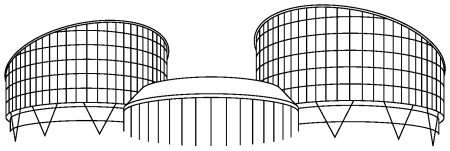

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ALIYEV v. AZERBAIJAN

(Applications nos. 68762/14 and 71200/14)

JUDGMENT

STRASBOURG

20 September 2018

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 Aliyev v. Azerbaijan,

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

Angelika Nußberger, *President,*
Erik Møse,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 10 July 2018,

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

PROCEDURE

1. The case originated in two applications (nos. 68762/14 and 71200/14) 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 an Azerbaijani national, Mr Intigam Kamil oglu Aliyev (*İntigam Kamil oğlu Əliyev* – "the applicant"), on 16 October 2014 and 6 November 2014 respectively.

2. The applicant was represented by Ms R. Remezaite and Mr J. Javadov, lawyers practising, respectively, in London and Baku. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant complained, in particular, that his conditions of detention had amounted to inhuman and degrading treatment, that he had not received adequate medical assistance while in detention, that his arrest and pre-trial detention had not been justified and had been carried out in bad faith, that interferences with his rights to respect for his private life, home and correspondence and to freedom of assembly had not been justified, and that his rights had been restricted for purposes other than those prescribed in the Convention.

4. On 19 November 2014 the complaints under Articles 5 §§ 1, 3, 4 and Articles 8, 11 and 18 in application no. 68762/14 were communicated to the Government and the remainder of that application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court. On 2 February 2015 application no. 71200/14 was also communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and at the time of the events lived in Saray, Absheron region.

6. The facts of the case are similar to the application *Rasul Jafarov v. Azerbaijan* (no. 69981/14, 17 March 2016) in that the applicant in the present case was arrested in the context of the same events and on the basis of similar charges.

A. The applicant's background

7. The applicant is a well-known human-rights lawyer and civil-society activist. He represents applicants before the Court in a large number of pending cases.

8. He is also the chairman of the Legal Education Society ("the Association"), a non-governmental organisation specialising in legal education. The Association was registered by the Ministry of Justice on 2 June 1999 and acquired the status of a legal entity. Its main functions consisted of raising legal awareness, organisation of training programmes for lawyers, human-rights defenders and journalists and preparation of reports relating to various human-rights issues in Azerbaijan. The Association was also involved in the preparation of applications to the Court and the submission of communications to the Committee of Ministers in the context of the execution of the Court's judgments.

9. The applicant has collaborated with various international organisations on human-rights-related projects, including the European Programme for Human Rights Education for Legal Professionals (HELP) of the Council of Europe.

10. The applicant was involved, together with other human-rights defenders, in the preparation of a consolidated list of political prisoners in Azerbaijan.

B. Circumstances preceding and surrounding the applicant's arrest

11. On 24 June 2014, during the June session of the Parliamentary Assembly of Council of Europe (PACE), the applicant, along with other local human-rights defenders, including Mr Rasul Jafarov, participated as one of the speakers at a side event organised in the Council of Europe. During this meeting the applicant delivered a report on human-rights abuses in Azerbaijan.

12. According to the applicant, following his participation at the above event, a smear campaign was launched against him and other human-rights defenders by the pro-government media. For instance, on 4 July 2014 an online news portal affiliated with the authorities described the applicant, together with other human-rights defenders, as "American agents who receive millions of dollars in grants for painting an anti-Azerbaijani picture".

13. On 14 August 2014, following the applicant's arrest on 8 August 2014 (see paragraphs 22-24 below), A.H., the Chairman of the Legal Policy and State Building Committee of the National Assembly, gave an interview to APA, a news agency, where he commented on the reactions to the arrests of the applicant and other human-rights defenders and stated:

> "... it is those [international organisations] which made them 'well-known'. The[se] organisations have had grants allocated to them in non-transparent ways, directing them into various activities, including those against Azerbaijan. These people, some of whom are traitors and some weak-minded, will at last answer before the law."

14. On 15 August 2014 A.H., the head of the Department of Social and Political Issues of the Presidential Administration, stated the following in an interview with Trend news agency:

> "The most deplorable thing is that such NGOs and individuals and some journalists, relying on foreign circles funding them, placed themselves above national law, evaded registration of their grant projects, filing financial statements, taxes and other legal requirements."

15. In an interview published on 2 September 2014 Y.M., a member of parliament from the ruling party, who was also the director of the Institute of History at the Academy of Sciences, stated the following in respect of the recently arrested NGO activists and human-rights defenders:

> "People who betray their motherland cannot be forgiven. ... The death penalty should be imposed on such people. Capital punishment must be the gravest punishment for them. Why should traitors be forgiven? ... Therefore, the activities of a number of non-governmental organisations must be investigated very seriously, and if any illegality is discovered, such organisations must be immediately banned and their leaders punished."

16. On 3 September 2014 an online news portal Vestnik Kavkaza published an interview with R.M., the head of the Presidential Administration who stated, *inter alia*, the following:

> "Such NGOs as the Institute for Peace and Democracy, Institute for Reporters' Freedom and Safety, Legal Education Society, Monitoring and Teaching Democracy Center and others use big grants from foreign organisations under the guise of human-rights protection to send reports to different quarters and organise anti-Azerbaijani campaigns in international structures where Azerbaijan is represented."

17. On 3 December 2014 State-owned news agencies published a sixty-page manifesto written by R.M., the head of the Presidential

Administration, entitled "The World Order of Double Standards and Modern Azerbaijan". The article accused human-rights NGOs operating in the country of being the "fifth column of imperialism". It postulated that various, mostly US-sponsored, donor organisations such as the United States of America's National Endowment for Democracy (NED), as well as other foreign organisations, supported political opposition movements in various countries against national governments. For local human-rights NGOs, the purpose of such funding schemes was the formation of a "fifth column" inside a country. US taxpayers' money was being spent on pushing for regime change or forcing existing governments to comply with US political demands.

C. Criminal proceedings against the applicant and his remand in custody

18. On 13 May 2014 the Prosecutor General's Office instituted criminal proceedings under Articles 308.1 (abuse of power) and 313 (forgery by an official) of the Criminal Code in connection with alleged irregularities in the financial activities of a number of non-governmental organisations, including the Association.

19. On 7 July 2014 the Sabail District Court ordered freezing of the applicant's and the Association's bank accounts.

20. On 8 August 2014 the applicant was invited to the Prosecutor General's Office for questioning as a witness in connection with the above-mentioned criminal proceedings. The interview lasted about thirty minutes during which the applicant was questioned about his background, his family and activities of the Association.

21. Following the interview, the investigator issued a decision charging the applicant under Articles 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (aggravated abuse of power) of the Criminal Code. The description of charges consisted of a single sentence which was one page long and was similar to that used in the case of *Rasul Jafarov* (cited above, § 16). The acts with which the applicant was charged appear as follows:

– the applicant, acting in his capacity as chairman of the Association, had failed to inform the relevant executive authority of his appointment as head and representative of a legal entity in accordance with Article 9.3 of the Law on State Registration of Legal Entities and the State Register;

– he had failed to register with the relevant executive authority various grant agreements which had been concluded since August 2012 with NED, Norway's Human Rights House Foundation and other donor organisations and which had allocated to the Association for various projects certain sums in the total amount of 74,911.29 new Azerbaijani manats (AZN – approximately 71,343 euros (EUR) at the material time);

– he had signed the said agreements on behalf of the Association without having legal authority to do so and had placed the above allocated sums in the bank accounts of the Association and then, by withdrawing cash, had made payments to himself and other people involved in the projects in the guise of salaries and service fees;

– by failing to register the above grant agreements with the relevant executive authority, the applicant had been conducting illegal entrepreneurial activity and had thus profited in the amount of AZN 66,204.58 (approximately EUR 63,051 at the material time) and had avoided in this context payment of taxes in the amount of AZN 8,706.71 (approximately EUR 8,291 at the material time) which were due in accordance with Articles 124, 150.1.6, 218, 219 and 220 of the Tax Code.

22. On the same day the Nasimi District Court, relying on the official charges brought against the applicant and the prosecutor's request for the application of the preventive measure of remand in custody, ordered the applicant's detention for a period of three months. The court justified the application of remand in custody by the seriousness of the charges and the likelihood that if released he might abscond and influence other participants in the criminal proceedings.

23. On 11 August 2014 the applicant appealed against this decision, claiming that his detention was unlawful. He stated, in particular, that there was no reasonable suspicion that he had committed a criminal offence and that there was no justification for the application of the preventive measure of remand in custody. He pointed out in this connection that the court had failed to justify his detention on remand and to take into account his personal circumstances, such as his social and family status, his state of health and his age, when it ordered his remand in custody. The applicant further complained, relying on Article 18 of the Convention, that the charges brought against him were politically motivated and that he had been deprived of his liberty because of his work as a human-rights activist. He submitted in this connection that the actual reason for his arrest had been the fact that he had represented numerous applicants before the Strasbourg Court in cases relating to election irregularities and that he had publicly accused the Government of human-rights abuses at a PACE event in June 2014. He argued that his arrest had been part of a general policy aimed at silencing and shutting down independent NGOs and human-rights defenders in the country.

24. On 13 August 2014 the Baku Court of Appeal dismissed the applicant's appeal and found the first-instance court's decision lawful. It referred to the seriousness of the charges and the likelihood that if released the applicant might abscond from the investigation, obstruct the proceedings and interfere with the course of justice. As regards the applicant's complaints that the charges were politically motivated owing to his human-rights activity, the court held that these allegations were unfounded

as the applicant had been accused of committing financial crimes which could not be associated with any political motives.

25. On 3 September 2014 the applicant applied to the Nasimi District Court, requesting the substitution of remand with either house arrest or release on bail. In his application the applicant, among other things, reiterated his complaints to the effect that the acts attributed to him did not constitute a criminal offence and there was accordingly no reasonable suspicion of his having committed such an offence.

26. On 12 September 2014 the Nasimi District Court dismissed the application, finding that the risks that the applicant might abscond or otherwise upset the course of the proceedings or reoffend continued to pertain.

27. On 15 September 2014 the applicant appealed, reiterating his arguments.

28. On 22 September 2014 the Baku Court of Appeal upheld the Nasimi District Court's decision of 12 September 2014.

29. On 23 October 2014 the applicant applied again to the Nasimi District Court, requesting the substitution of remand with either house arrest or release on bail.

30. On 24 October 2014 the Nasimi District Court dismissed his application based on similar findings.

31. On the same date the Nasimi District Court extended the applicant's pre-trial detention by three months, finding that the grounds justifying his continued detention "had not ceased to pertain".

32. On 27 October 2014 the applicant appealed against both decisions concerning his application for the substitution of remand with other alternative measures and the extension of his pre-trial detention.

33. On 29 October 2014 the Baku Court of Appeal dismissed both appeals and upheld the first-instance court's above decisions.

34. On 12 December 2014 the Prosecutor General's Office charged the applicant *de novo*. In addition to the original charges, the applicant was further charged under Articles 179.3.2 (high-level embezzlement) and 313 (forgery by an official) of the Criminal Code. The acts imputed to the applicant under Article 213.1 (large-scale tax evasion) of the Criminal Code were re-qualified under Article 213.2.2 (tax evasion on a very large scale) of the Criminal Code. In particular, the period of time during which the applicant allegedly committed crimes was expanded from 2012 back to 2009 onwards. As regards the charges of embezzlement, the applicant was accused of transferring various amounts from the bank accounts of the Association to the bank account of one of the Association's employees with a view to their subsequent withdrawing the cash. With respect to the charges concerning forgery, the applicant was accused of inserting false information into the cashbook concerning payments to various employees of the Association in the guise of salaries and services fees. As regards the

re-qualification of the crime of tax evasion, the total amount of alleged illegal profit obtained by the applicant was raised to AZN 496,729.25 (approximately EUR 473,075 at the material time) and the amount of alleged unpaid taxes to AZN 65,636.85 (approximately EUR 62,510 at the material time).

35. On 29 December 2014 the Prosecutor General's Office drew up a bill of indictment and the case went to trial.

D. Search and seizure in the applicant's home and in the Association's office

36. On 7 August 2014 the prosecutor in charge applied to the Nasimi District Court to have a search of the office of the Association (see paragraph 8 above) and "other places of storage" authorised. The prosecutor justified the search by referring to the criminal investigation under Articles 308.1 (abuse of power) and 313 (forgery by an official) of the Criminal Code "into breaches of legislation discovered in the activities of a number of non-governmental organisations and branches and representatives offices of foreign non-governmental organisations in Azerbaijan".

37. On the same day the Nasimi District Court authorised a search of the Association's office and "other places of storage". The relevant parts of the decision read as follows:

> "[The prosecutor in charge of the case] applied to the court with a request to conduct a search and seizure in the framework of the criminal case no. 142006023.
>
> [The prosecutor in charge] justified his request by [the following:] ... this criminal case concerns an investigation under Articles 308.1 [abuse of power] and 313 [forgery by an official] of the Criminal Code into breaches of legislation discovered in the activities of a number of non-governmental organisations and branches and representatives offices of foreign non-governmental organisations in Azerbaijan. Given that the evidence gathered gives grounds [to conduct a search], it is necessary for the purpose of carrying out a comprehensive, thorough and objective investigation to conduct a search [of the Association's] office located at [office address] ... and other places of storage ...
>
> Having regard to the above, for the purpose of conducting a comprehensive, thorough and objective investigation, a search and seizure is requested of [the Association's] office located at [office address] ... and other places of storage.
>
> The court considers that for the purpose of conducting a comprehensive, thorough and objective investigation it is necessary to conduct a search and seizure [of the Association's] office located at [office address] ... and other places of storage."

38. On 8 August 2014 the investigator carried out a search of the applicant's home on the basis of the Nasimi District Court's decision of 7 August 2014. According to the search record of 8 August 2014, the search was carried out in the presence of the applicant's lawyer, members of his family and two attesting witnesses (*hal şahidləri*). The investigator seized all the documents, computers, USB flash drives and other electronic data

storage devices. On the same day the investigator also carried out a search of the home of the applicant's brother where the applicant was officially registered as a resident.

39. On 9 August 2014 the investigator carried out a search of the Association's office. It appears from the search record of 9 August 2014 that the investigator seized all the documents found in the office, including documents related to the Association's activities and case files concerning over a hundred applications pending before the Court and documents related to the proceedings before the domestic courts.

40. On an unspecified date the applicant lodged a complaint with the Nasimi District Court, claiming that the searches had been unlawful. Relying on Article 8 of the Convention, he complained that there had been no legal basis for carrying out the searches. He also complained that the investigator had failed to record each seized document as required by the relevant law and had taken the documents without making an inventory. He further complained of the seizure of numerous documents and files relating to the ongoing court proceedings before the Court and the domestic courts.

41. On 12 September 2014 the Nasimi District Court dismissed the applicant's claim. The first-instance court held that the searches had been conducted in accordance with the relevant law. As to the seizure of the documents relating to the cases pending before the Court and the domestic court, it found that they could not be returned to the applicant at this stage of the proceedings.

42. On 15 September 2014 the applicant appealed against this decision, reiterating his previous complaints. He asked, in particular, the appellate court to declare the searches unlawful, to order the return of the documents relating to the cases pending before the Court and the domestic courts, and to provide him with a copy of all the seized documents in order to prepare his defence.

43. On 23 September 2014 the Baku Court of Appeal dismissed the applicant's appeal and upheld the first-instance court's decision of 12 September 2014.

E. The applicant's conditions of detention and his medical treatment in detention

1. The applicant's conditions of detention in the detention facility

(a) The applicant's account

44. Following his arrest, the applicant was placed in the Baku pre-trial detention facility in Kurdakhani.

45. From 9 to 12 August 2014 the applicant was held in a so-called "quarantine" cell designed for the admission of newcomers. He was detained in this cell, which according to him measured approximately 10 sq.

m, together with eight other detainees. The applicant did not have his own bed and had to share beds with others. The cell was not adequately ventilated and, although all the detainees were smokers except the applicant, there was no special place for smoking. The temperature inside the cell was very high. The applicant had no access to outdoor exercise and was confined to his cell for the whole day. There was no bathroom and the sanitary conditions were very bad. Water supply was available only two hours per day. The light was always on.

46. As from 12 August 2014, following a visit of a delegation from the International Committee of the Red Cross, the applicant was transferred to another cell. He was then detained in a cell measuring 12-14 sq. m together with three other detainees. The applicant had his own bed and bedding. There was a small window in the cell. However, the cell was not adequately ventilated and the temperature inside the cell was very high in August and September and very low in winter because the central-heating system was turned on only after 15 November. There was no fresh air in the cell and while there was a yard of 10 sq. m adjacent to the cell, it was closed after 4 p.m. every day. The light in the cell was never switched off, contributing further to the lack of sleep. Cold water was provided every few hours, but hot water was available only twice per week.

47. The food served in the detention facility was meagre and of poor quality and had to be supplemented with food sent by the applicant's family. However, the applicant was entitled to receive only one parcel of food per week and there was no possibility to keep food fresh because of the absence of a refrigerator.

48. The applicant was confined to his cell for most of the day. There was an exercise room in the detention facility, but detainees were not allowed to use it.

(b) The Government's account

49. Without specifying the relevant periods of the applicant's detention, the Government submitted that the applicant had been detained with three other detainees in the cell measuring 17.82 sq. m., which was designed to accommodate four persons. The cell had been adequately lit and ventilated. There had been one window in the cell measuring 120 by 140 cm. Sanitary facilities had been separated by a plastic door and consisted of a toilet, a sink and a shower. The applicant had been provided with a separate bed and bedding, water, food and other necessities. In support of their account the Government submitted a copy of a certificate issued by the Prison Service which provided a general overview of the Baku pre-trial detention facility.

2. The applicant's state of health and medical treatment in detention

50. The applicant suffered from a number of conditions before his arrest. In particular, he suffered from osteochondrosis of the vertebral column,

abnormal blood pressure, thrombophlebitis, prostatic hyperplasia, insomnia and headaches and had neurological and urological problems.

51. According to the applicant, his state of health significantly deteriorated following his arrest because of the interruption and postponement of medical treatment that he had been undergoing before his arrest.

52. On 24 October 2014 during a hearing at the Nasimi District Court the applicant felt unwell and fainted in the courtroom. The applicant's lawyer immediately lodged an application with the judge, asking for the applicant's examination by a medical expert in order to establish whether his state of health was compatible with his detention. The judge decided to forward the request to the Serious Crimes Department of the Prosecutor General's Office, without taking further action.

53. On 24 October 2014 the applicant's lawyer also lodged an application with the head of the detention facility, asking for the applicant to receive adequate medical treatment.

54. On 25 and 27 October 2014 the applicant underwent medical examinations, including a MRI scan of his brain and vertebral column in the National Oncology Centre in Baku. According to the results of the scan, there was no pathology in the brain or the vertebral column. The results of the scan revealed the presence of osteochondrosis of the vertebral column, a hernia in the vertebral column and disc protrusions in the following areas of the vertebral column: C 4-5, C 5-6, C 6-7, L 2-3, L 4-5. The doctors, however, concluded that none of these hernias or disc protrusions required surgery or inpatient treatment and prescribed outpatient treatment. The ultrasound examination of the abdominal zones showed enhanced parenchymal echogenicity of the left kidney, and some hydronephrosis and some kidney stones in the renal collecting system. Small masses were detected in the prostate. In order to determine whether there was pathological process in the prostate, the applicant was subjected to a specific prostate blood test, PSA (Prostate-Specific Antigen), and the result of the test was satisfactory.

55. On 28 October 2014 the applicant asked the head of the detention facility to inform him of the results of the medical examinations.

56. On 31 October 2014 the applicant was officially informed of the results of the medical examinations. However, according to the applicant, he was not provided with copies of these results.

57. On 11 November 2014 the applicant's lawyer asked the head of the detention facility to provide him with copies of the results of the applicant's medical examinations. It is not clear from the case-file whether the applicant was provided with those documents.

58. By a decision of 14 November 2014, the investigator in charge of the case dismissed a request by the applicant for examination by a forensic expert, finding that the applicant had undergone the relevant medical

examinations and there was no need for his examination by a forensic expert.

59. On 20 November 2014 the applicant lodged a request with the prosecution authorities and the administration of the detention facility, asking them to allow his medical examination by two independent doctors, I.H. and A.G.

60. By a decision of 28 November 2014, the investigator in charge of the case dismissed the applicant's request, finding that he had failed to substantiate his request.

61. By a letter of 2 December 2014, the medical department of the Ministry of Justice informed the applicant that he had undergone the relevant medical examinations and a conservative treatment had been prescribed for him.

62. In December 2014 the applicant was examined by the neurologist, who prescribed anti-anxiety drugs. The applicant was also seen by an ophthalmologist and a psychiatrist, and underwent an ultrasound examination.

63. On 26 December 2014 the applicant stopped taking the anti-anxiety drugs prescribed. According to the applicant, he decided not to take the drugs owing to the serious side effects, such as appearance of suicidal behaviour.

64. According to the Government, on 19 February 2015 the applicant was examined in the Neurosurgery Hospital by the country's leading doctors. The laboratory and ultrasound examination did not reveal any cancer-related anomalies.

3. The applicant's conditions of transport to and the conditions of detention in the court-house

65. According to the applicant, he was transported several times to and from the Baku pre-trial detention facility. The distance between the detention facility and the court-house was about 15-20 km.

66. The applicant and other detainees were transported in special vans and the journey usually lasted about one hour. According to the applicant, the vehicles were in poor condition and there was no appropriate place to sit or stand inside. Allegedly, no ventilation or air conditioning was available.

67. On 24 October 2014 the applicant was transported to the Nasimi District Court together with nine other detainees, in a van allegedly designed for eight people.

68. He was detained in a room situated in the basement of the court-house. According to the applicant, the room was not ventilated and did not allow access to daylight. There was only one little window which had metal bars and was not open. The room was small and measured 4-5 sq. m. The applicant shared this room with four detainees all day waiting for his hearing. He was allegedly not provided with food and water.

4. The applicant's attempts to obtain redress for the alleged lack of medical treatment and poor conditions of detention

69. On 28 January 2015 the applicant lodged under the Code of Criminal Procedure a complaint with the Sabunchu District Court against the Baku pre-trial detention facility, complaining about his conditions of detention and of the lack of adequate medical treatment.

70. On 8 February 2015 the court left the applicant's complaint without examination for lack of jurisdiction as the investigation had been already completed and his criminal case had gone to trial.

71. On 25 February 2015 the Baku Court of Appeal upheld the above decision.

F. The applicant's criminal conviction and subsequent release from detention

72. On 22 April 2015 the Baku Assize Court convicted the applicant as charged under Articles 179.3.2, 192.2.2, 213.2.2, 308.2 and 313 of the Criminal Code (see paragraphs 21 and 34 above) and sentenced him to seven and a half years' imprisonment.

73. On 21 July 2015 the Baku Court of Appeal upheld the applicant's conviction and sentence.

74. On 24 February 2016 the Supreme Court upheld the Baku Court of Appeal's judgment of 21 July 2015.

75. On an unspecified date the Prosecutor General lodged an application for supervisory review with the Plenum of the Supreme Court on the ground of the severity of the sentence imposed on the applicant.

76. On 28 March 2016 the Plenum of the Supreme Court granted the application and reduced the applicant's sentence to five years' imprisonment suspended on probation. The applicant was released from detention.

77. The applicant's criminal trial is the subject of a separate application which is pending before the Court (application no. 51324/16).

II. RELEVANT DOMESTIC LAW AND PRACTICE AND INTERNATIONAL REPORTS

78. For a summary of the relevant domestic law, including most of the relevant provisions of the Criminal Code, and practice and for international reports see *Yunusova and Yunusov v. Azerbaijan* (no. 59620/14, §§ 92-103, 2 June 2016) and *Rasul Jafarov* (cited above §§ 50-84). Furthermore, according to Article 213.2.2 of the Criminal Code, as in force at the material time, an offence of tax evasion on a very large scale (defined as an amount above AZN 100,000 but not exceeding AZN 500,000) was punishable by

imprisonment for a period between three to seven years, with or without deprivation of the right to hold a certain position or to engage in a certain activity for a period of up to three years.

79. The relevant parts of the Concluding observations on the fourth periodic report of Azerbaijan (CCPR/C/AZE/4) adopted by the UN Human Rights Committee on 16 November 2016, read as follows:

> **"Freedom of expression**
>
> 36. The Committee remains concerned about extensive restrictions on freedom of expression in practice, including:
>
> (a) Consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.;
>
> ...
>
> 37. The State party should take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice. It should take immediate steps to end any repression against the above-mentioned categories of persons, provide effective protection against persecution or retaliation and ensure that any restrictions on the exercise of their freedom of expression comply with the strict requirements of article 19 (3) of the Covenant. ...
>
> ...
>
> **Freedom of association**
>
> 40. The Committee is concerned about restrictive legislation negatively affecting the exercise of freedom of association, including stringent registration requirements for public associations and NGOs, broad grounds for denial of registration and temporary suspension or permanent closure of NGOs, restrictive regulations on grants and donations received by public associations and NGOs, including the ban on foreign funding, and heavy penalties for violations of the relevant legislation. The Committee is further concerned about threats against NGO leaders, the high number of criminal investigations against NGOs, the freezing of their assets and those of their members and the significant number of NGOs that have been closed. ...
>
> 41. The State party should revise relevant laws, regulations and practices with a view to bringing them into full compliance with the provisions of articles 19 and 22 of the Covenant, including by:
>
> (a) Simplifying registration rules and clarifying the broad grounds for denying the registration of and temporarily suspending or permanently closing NGOs;
>
> (b) Ensuring that legal provisions regulating NGO grants allow access to foreign funding and do not put at risk the effective operation of public associations as a result of overly limited or overly regulated fundraising options;
>
> (c) Ending the crackdown on public associations and ensuring that they can operate freely and without fear of retribution for their legitimate activities; ..."

80. In addition, the United Nations Special Rapporteur on the situation of human rights defenders conducted an official visit to Azerbaijan from 14 to 22 September 2016. In the course of his visit, the Special Rapporteur met high-level representatives of the national authorities and members of civil society, including human-rights defenders in detention. The most relevant parts of the report on this visit ("Report of the Special Rapporteur on the situation of human rights defenders on his mission to Azerbaijan"), which was presented to the Human Rights Council at its thirty-fourth session (27 February-24 March 2017), read as follows:

"B. Situation of human rights defenders

1. Stigmatization

28. The situation of civil society in Azerbaijan has seen serious setbacks since 2009, as the rights to freedom of expression, assembly and association have increasingly been curtailed when exercised in opposition to the Government or its policies. Moreover, high-level government officials have used a strident rhetoric to stigmatize human rights defenders and declare them tools of Western influence bound to undermine the State.

29. In December 2014, the head of the Presidential Administration published an essay, stating that Western-funded NGOs played the role of a "fifth column" in Azerbaijan and made several public statements repeating the accusation. Other key officials made similar statements. Most defenders have been accused of being political opponents, promoting values that run counter to those of their society or culture. They have been denounced as politically or financially motivated actors. During the visit, it became evident that such inflammatory language by senior government officials has had a stigmatizing impact on civil society.

30. The continued stigmatization of defenders, which exposes them to heightened risks and produces a chilling effect on the public perception of them, remains of concern. Describing reputable organizations as paid political activists serves no legitimate purpose. The Special Rapporteur urges the Government to refrain from stigmatizing human rights defenders and to respect the legitimate role of civil society in the promotion of human rights and the rule of law in Azerbaijan.

31. The Government is encouraged to support the work of independent civil society organizations, despite disagreements or criticisms, bearing in mind their invaluable role in advancing Azerbaijani society. The Special Rapporteur urges the Government to undertake activities to raise awareness of human rights among the public and foster a spirit of dialogue and cooperation in society.

2. Criminalization

32. During the visit, the Special Rapporteur received many reports and testimonies pointing to the intensified crackdown on and criminalization of civil society in Azerbaijan. In that context, the authorities have targeted defenders, journalists, lawyers and grassroots activists through the use of politically motivated criminal prosecutions, arrests, imprisonment and travel bans. They have also used detention to intimidate political and social media activists on what often seem to be spurious misdemeanour charges of resisting police orders or petty hooliganism.

33. In 2015, the Committee against Torture expressed deep concern that human rights defenders had been arbitrarily deprived of their liberty, subjected to ill-treatment and, in some cases, denied adequate medical treatment in retaliation for their professional activities (see CAT/C/AZE/CO/4, para. 10). At the conclusion of its visit in May 2016, the Working Group on arbitrary detention stated that defenders continued to be detained under criminal or administrative charges as a way to impair the exercise of their basic human rights and fundamental freedoms and to silence them. Those practices constituted an abuse of authority and violated the rule of law that Azerbaijan had agreed to comply with. The Working Group also referred to the large number of cases of detainees who were exposed to violence, torture and ill-treatment. When he visited detained defenders during his visit, the Special Rapporteur could attest to the vulnerability of their physical integrity owing to the continued reports of violence in the context of detention in the country.

34. The Special Rapporteur, jointly with other mandate holders, has issued a number of public statements, urging the authorities to put an end immediately to all forms of persecution of human rights activists in the country. At the session of the Human Rights Council, held in June 2015, a group of 25 States endorsed an oral statement on the situation of human rights in Azerbaijan, raising concerns about the shrinking space for civil society and the imprisonment of independent voices, in particular defenders, and calling for their immediate and unconditional release.

35. The punitive approach to criminalize defenders is said to include a number of the following elements: applying politically motivated charges (inciting hatred, mass disorder and treason); resorting to fabricated charges (possession of drugs and weapons, hooliganism and embezzlement); and using special charges (illegal business activity, tax evasion, and abuse of office) to target primarily the heads of prominent NGOs in Azerbaijan and curtail the ability of NGOs to operate.

36. It is alarming that the maximum term of imprisonment under the code of administrative offences for misdemeanours, with which defenders are often charged (for example, hooliganism, resisting police and traffic violations), has been increased from 15 to 90 days. It is now equal to the minimum term of detention under the criminal code. The Human Rights Committee has held that such severity of punishment may amount to *de facto* criminal sanction (see CCPR/C/AZE/CO/4, para. 20). Furthermore, in practice, administrative trials that result in such sentences are reportedly perfunctory, with defendants having limited access to independent counsel. Judges tend to decide on periods of detention based almost exclusively on police testimonies. The widespread nature of this type of criminalization could be seen in the documenting of at least 30 cases by civil society, in which the authorities used administrative law offences to jail human rights activists in 2016.

37. The gravity of the arbitrary detention of defenders in Azerbaijan is illustrated through the continuous efforts by civil society to monitor and document how many political prisoners are in detention at a given time. Various lists of political prisoners are updated regularly to inform the debate about the exact number of political prisoners in the country. In fact, during their visits, both the Special Rapporteur and the Working Group on arbitrary detention received various lists of a large number of defenders, journalists and political and religious leaders who were detained on a broad range of politically motivated charges (drugs- and arms-related offences, hooliganism, resisting police, tax evasion, etc.) during their visits.

38. In late 2015 and early 2016, the Government conditionally released or pardoned a number of human rights defenders. However, none of those released had their convictions vacated and several still face travel restrictions. The Special Rapporteur

shares the view of the Working Group on arbitrary detention that the pardon did not lead to any significant change in the country regarding other persons deprived of their liberty. Furthermore, even as some activists and journalists were released, the authorities regrettably arrested many others on spurious criminal and administrative charges to prevent them from carrying out their legitimate work.

39. The Special Rapporteur is deeply concerned about the intimidation facing the families and relatives of defenders who carry out their activism from abroad, which in some cases has involved criminal charges being brought against those relatives. The Special Rapporteur calls on the Government to refrain from criminalizing the important work of human rights defenders and immediately review the cases of defenders and their relatives deprived of their liberty, with a view to releasing them unconditionally."

III. COUNCIL OF EUROPE COMMITTEE OF MINISTERS DOCUMENTS CONCERNING THE EXECUTION OF THE *ILGAR MAMMADOV* GROUP OF CASES

81. Supervision of the execution of the Court's judgments in the cases of *Ilgar Mammadov v. Azerbaijan* (no. 15172/13, 22 May 2014, final on 13 October 2014) and *Rasul Jafarov* (cited above, final on 4 July 2016) is done by the Committee of Ministers under enhanced procedure. According to the Committee of Ministers' decision CM/Del/Dec(2016)1273, adopted during its 1273 DH meeting (December 2016), the *Rasul Jafarov* case was classified as a clone of the "*Ilgar Mammadov* group of cases" in respect of the general measures.

82. During the first examination of the *Ilgar Mammadov* case at its 1214th meeting (December 2014), the Committee, in the context of general measures, "conveyed its particular concern about the finding of a violation of Article 18 taken in conjunction with Article 5 of the Convention" and "therefore called upon the Azerbaijani authorities to furnish, without delay, concrete and comprehensive information on the measures taken and/or planned to avoid that criminal proceedings are instituted without a legitimate basis and to ensure effective judicial review of such attempts by the prosecutor's office".

83. The Committee further examined this case at each of its Human Rights meetings and has repeated the above request at every examination of this case. Notably, at its 1236th meeting (September 2015), the Committee of Ministers adopted an Interim Resolution (CM/ResDH(2015)156) in which it "expressed its deepest concern in respect of the lack of adequate information on the general measures envisaged to avoid any circumvention of legislation for purposes other than those prescribed, which represents a danger for the respect of the rule of law".

84. At its 1273rd meeting (December 2016), the Committee again "expressed its deep concern about the absence of any information from the authorities concerning the general measures taken or envisaged to prevent

violations of the rule of law through abuse of power of the kind established in the European Court's *Ilgar Mammadov* judgment".

85. On 14 February 2017 the Azerbaijani Government submitted an action plan on the measures taken and planned (DH-DD(2017)172). The action plan highlighted, in particular, the Executive Order signed by the President of Azerbaijan on 10 February 2017. In this context, the action plan indicated the following:

> "... [the] Executive Order covers a number of questions raised by the Court in its judgment, including existence of reasonable suspicion of having committed an offence at the time of arrest and consideration of alternative measures of restraint by relevant authorities.
>
> Further humanisation of penal policies in Azerbaijan has been listed among the aims of the document. It says that, in application of measures of restraint by investigation authorities and courts, provisions of criminal procedure law concerning grounds for arrest shall be strictly complied with, and the level of application of alternative sanctions and measures of procedural compulsion shall be extended to attain aims of punishment and of measure of restraint through non-custodial means.
>
> The President of the Republic of Azerbaijan has recommended to the Supreme Court, the General Prosecutor's Office and instructed the Ministry of Justice with elaboration, within two months, of the draft laws concerning decriminalisation of certain crimes; provision of the sentences alternative to imprisonment; development of grounds for non-custodial measures of restraint and sentences alternative to imprisonment; wider application of institutions of substitution of remainder of imprisonment by lighter punishment, parole and suspended sentence; extension of cases of application of measures of restraint alternative to arrest; simplification of rules for amendment of arrest by alternative measures of restraint; and further limitation of grounds for arrest for low-risk or less serious crimes.
>
> The President has also recommended to the Office of the Prosecutor General to start with examination of alternative measures of restraint when considering motions for arrest.
>
> It has also been recommended to the courts that they examine the existence of reasonable suspicions of individual's having committed an offence and grounds for arrest, when deciding on measure of restraint, and arguments in favour of alternative measures.
>
> According to Executive Oder, the Supreme Court shall hold continued analysis of case law of the courts concerning application of arrest and imposition of imprisonment..."

86. At its 1294th meeting (September 2017), the Committee, as regards the general measures, noted with interest the information provided about the progress of the implementation of the Presidential Order of 10 February 2017 and invited the authorities to provide detailed information about the legislative amendments foreseen in this regard. The Committee also urged the authorities to provide information on the other measures foreseen in the Presidential Order of relevance for the prevention of violations of the rule of law through abuse of power of the kind established in the European Court's judgments in the *Ilgar Mammadov* group of cases.

87. The Government of Azerbaijan subsequently informed the Committee of Ministers that, in addition to a number of measures taken pursuant to the Executive Order of 10 February 2017 (see paragraph 85 above), on 20 October 2017 the National Assembly had adopted the Law on Amendments to the Criminal Code decriminalising certain acts and creating the possibility for those convicted for serious crimes to apply for conditional release after having served two-thirds of a criminal sentence.

IV. INTERNATIONAL MATERIAL CONCERNING THE PROTECTION OF HUMAN-RIGHTS DEFENDERS

A. United Nations

88. On 17 December 2015 the General Assembly of the United Nations, at its seventieth session, adopted a Resolution on Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The most relevant passages of the Resolution read as follows:

> "The General Assembly ...
>
> ...
>
> 1. Stresses that the right of everyone to promote and strive for the protection and realization of human rights and fundamental freedoms without retaliation or fear thereof is an essential element in building and maintaining sustainable, open and democratic societies;
>
> 2. Calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders who exercise the rights to freedom of opinion, expression, peaceful assembly and association, which are essential for the promotion and protection of human rights;
>
> ...
>
> 4. Urges States to acknowledge through public statements, policies or laws the important and legitimate role of individuals, groups and organs of society, including human rights defenders, in the promotion of human rights, democracy and the rule of law, as essential components of ensuring their recognition and protection, including by condemning publicly all cases of violence and discrimination against human rights defenders, including women human rights defenders, underlining that such practices can never be justified;
>
> 5. Strongly condemns the violence against and the targeting, criminalization, intimidation, torture, disappearance and killing of any individuals, including human rights defenders, for reporting and seeking information on human rights violations and abuses, and stresses the need to combat impunity by ensuring that those responsible for violations and abuses against human rights defenders, including against their legal representatives, associates and family members, are promptly brought to justice through impartial investigations;

6. Condemns all acts of intimidation and reprisal by State and non-State actors against individuals, groups and organs of society, including against human rights defenders and their legal representatives, associates and family members, who seek to cooperate, are cooperating or have cooperated with subregional, regional and international bodies, including the United Nations, its representatives and mechanisms, in the field of human rights;

...

8. Calls upon States to take concrete steps to prevent and put an end to the arbitrary arrest and detention of human rights defenders, and in this regard strongly urges the release of persons detained or imprisoned, in violation of the obligations and commitments of States under international human rights law, for exercising their human rights and fundamental freedoms, such as the rights to freedom of expression, peaceful assembly and association, including in relation to cooperation with the United Nations or other international mechanisms in the area of human rights;

...

12. Encourages States to develop and put in place sustainable public policies or programmes that support and protect human rights defenders at all stages of their work in a comprehensive manner;

...

19. Strongly calls upon all States:

(a) To refrain from, and ensure adequate protection from, any act of intimidation or reprisal against human rights defenders who cooperate, have cooperated or seek to cooperate with international institutions, including their family members and associates ...”

B. Council of Europe

89. On 6 February 2008 at its 1017th meeting the Committee of Ministers adopted a Declaration on Council of Europe action to improve the protection of human-rights defenders and promote their activities. The most relevant parts of the Declaration read as follows:

“The Committee of Ministers of the Council of Europe ...

...

1. Condemns all attacks on and violations of the rights of human rights defenders in Council of Europe member States or elsewhere, whether carried out by state agents or non-state actors;

2. Calls on member States to:

i) create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights;

ii) take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities;

iii) strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;

iv) take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings ..."

90. On 27 June 2012 the Parliamentary Assembly adopted Resolution 1891 (2012) on the situation of human rights defenders in Council of Europe member States, which in the relevant parts read as follows:

"4. The Assembly ... recalls that the responsibility for promoting and protecting human rights defenders lies first and foremost with States.

5. The Assembly therefore calls on the member States of the Council of Europe to:

5.1. ensure full observance of the human rights and fundamental freedoms of human rights defenders, as guaranteed by the European Convention on Human Rights (ETS No. 5);

5.2. put an end to any administrative, fiscal or judicial harassment of human rights defenders and ensure, in all circumstances, that they are able to carry out their activities in accordance with international human rights standards and relevant national legislation ..."

91. On 26 June 2018 the Parliamentary Assembly adopted Resolution 2225 (2018) on protecting human rights defenders in Council of Europe member States, which in the most relevant parts read as follows:

"1. The Parliamentary Assembly recalls its Resolutions 1660 (2009) and 1891 (2012) on the situation of human rights defenders in Council of Europe member State and its Resolution 2095 (2016) and Recommendation 2085 (2016) on strengthening the role and protection of human rights defenders in Council of Europe member States. It pays tribute to the invaluable work of human rights defenders for the protection and promotion of human rights and fundamental freedoms. Human rights defenders are "those who work for the rights of others" – individuals or groups who act, in a peaceful and legal way, to promote and protect human rights, whether they are lawyers, journalists, members of non-governmental organisations or others.

...

3. The Assembly notes that in the majority of Council of Europe member States, human rights defenders are free to work in an environment conducive to the development of their activities. Nevertheless, it notes that over the past few years the number of reprisals against human rights defenders has been on the rise. New restrictive laws on NGO registration and funding have been introduced. Many human rights defenders have been subject to judicial, administrative or tax harassment, smear campaigns and criminal investigations launched on dubious charges, often related to alleged terrorist activities or purportedly concerning national security. Some of them have been threatened, physically attacked, arbitrarily arrested, detained or imprisoned. Others have even been assassinated. As a result, the space for human rights defenders' action is becoming more and more restricted and less safe.

4. The Assembly condemns these developments and reaffirms its support for the work of human rights defenders ...

5. The Assembly therefore calls on member States to:

5.1. respect the human rights and fundamental freedoms of human rights defenders, including their right to liberty and security, a fair trial and their freedoms of expression and assembly and association;

5.2. refrain from any acts of intimidation or reprisal against human rights defenders and protect them against attacks or harassment by non-State actors;

...

5.5. conduct effective investigations into all acts of intimidation or reprisal against human rights defenders, and especially cases of assassinations, physical attacks and threats;

5.6. ensure an enabling environment for the work of human rights defenders, in particular by reviewing legislation and bringing it into line with international human rights standards, refraining from organising smear campaigns against defenders and other civil society activists and firmly condemning such campaigns where organised by non-State actors;

...

5.10. fully co-operate with the Council of Europe Commissioner for Human Rights in addressing individual cases of persecution and reprisals against human rights defenders;

5.11. evaluate the sufficiency in practice, as measured by concrete results, of their efforts taken to protect human rights defenders since the adoption of the United Nations Declaration on Human Rights Defenders and the Committee of Ministers' Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities. ..."

C. Organization for Security and Co-operation in Europe (OSCE)

92. On 10 June 2014 the OSCE Office for Democratic Institutions and Human Rights (ODIHR) published Guidelines on the Protection of Human Rights Defenders, the most relevant parts of which read as follows:

"4. **Need for protection of human rights defenders**: Human rights defenders face specific risks and are often targets of serious abuses as a result of their human rights work. Therefore, they need specific and enhanced protection at local, national and international levels. Certain groups of human rights defenders are exposed to heightened risks due to the specific nature of their work, the issues they are working on, the context in which they operate, their geographical location or because they belong to or are associated with a particular group.

5. **The nature of state obligations**: The primary responsibility for the protection of human rights defenders rests with states. States have both positive and negative obligations with regard to the rights of human rights defenders. In line with their duties under international law – according to which they must respect, protect and fulfill human rights – they have an obligation to:

a) refrain from any acts that violate the rights of human rights defenders because of their human rights work;

b) protect human rights defenders from abuses by third parties on account of their human rights work and to exercise due diligence in doing so; and

c) take proactive steps to promote the full realization of the rights of human rights defenders, including their right to defend human rights.

6. **A safe and enabling environment to empower human-rights work**: Effective protection of the dignity, physical and psychological integrity, liberty and security of human rights defenders is a pre-requisite for the realization of the right to defend human rights. Furthermore, a safe and enabling environment requires the realization of a variety of other fundamental human rights that are necessary to carry out human rights work, including the rights to freedom of opinion and expression, peaceful assembly and association, the right to participate in public affairs, freedom of movement, the right to private life and the right to unhindered access to and communication with international bodies, including international and regional human rights mechanisms.

...

B. Protection from judicial harassment, criminalization, arbitrary arrest and detention

23. Human rights defenders must not be subjected to judicial harassment by unwarranted legal and administrative proceedings or any other forms of misuse of administrative and judicial authority, or to criminalization, arbitrary arrest and detention, as well as other sanctions for acts related to their human rights work. They must have access to effective remedies to challenge the lawfulness of detention or any other sanctions imposed on them.

Criminalization and arbitrary and abusive application of legislation

24. States should review the domestic legal framework relevant to human rights defenders and their activities for its compliance with international human rights standards. They should broadly and effectively consult with human rights defenders and seek international assistance in doing so. Any legal provisions that directly or indirectly lead to the criminalization of activities that are protected by international standards should be immediately amended or repealed.

...

26. Laws, administrative procedures and regulations must not be used to intimidate, harass, persecute or retaliate against human rights defenders. Sanctions for administrative or minor offences must always be proportionate and must be subject to the possibility of appeal to a competent and independent court or tribunal.

27. States should take steps, where required, to strengthen the independence of the judiciary and prosecution authorities, as well as the proper functioning of law enforcement bodies, to ensure that human rights defenders are not subjected to politically-motivated investigations and prosecutions or to the otherwise abusive application of laws and regulations for their human rights work.

28. Effective oversight mechanisms should be put in place to investigate possible misconduct by law enforcement and judicial officials concerning the judicial harassment of human rights defenders. In addition, any structural shortcomings that may give rise to the abuse of power or corruption within the judiciary and law enforcement should be rigorously addressed.

...

Arbitrary detention and treatment in detention

31. States should not subject human rights defenders to arbitrary deprivation of liberty because of their engagement in human rights activity. Any form of deprivation of liberty must be based on and in accordance with procedures established by law, subject to the possibility for the detained to challenge the legality of detention before a competent court and otherwise comply with international human rights standards ..."

THE LAW

I. SCOPE OF THE APPLICATIONS

A. Application no. 68762/14

93. The respondent Government were given notice of the application on 19 November 2014 under Article 5 §§ 1, 3 and 4 and Articles 8 § 2, 11 and 18 of the Convention. After this notice the applicant made new submissions concerning the factual developments in the case (summarised in paragraphs 29-35 above) and provided further details concerning his original complaints, taking into account those factual developments.

94. The Court reiterates that, as a general rule, it does not examine any new matters raised after the Government have been given notice of the application, unless the new matters are an elaboration on the applicant's original complaints to the Court (see *Ilgar Mammadov*, cited above, § 78). Because the applicant may subsequently elucidate or elaborate upon his or her initial submissions, the Court must take into account not only the application form but the entirety of his or her submissions in the course of the proceedings before it which may eliminate any initial omissions or obscurities (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 122 and 129, 20 March 2018). The Court notes that the applicant's original application included a number of complaints related to his arrest and continuing detention, under the above-mentioned Convention provisions. His subsequent submissions did not constitute a new matter which had not been covered in the original application sent to the Government. These subsequent submissions elaborated on his initial submissions and concerned the factual developments in the proceedings relating to the applicant's continued detention in the framework of the same proceedings.

95. Accordingly, given that the applicant's new submissions constitute an elaboration of his original complaints to the Court on which the parties have commented, they fall within the scope of the present case. The Court will therefore proceed with the examination of the applicant's complaints related to his pre-trial detention, taking into account all the relevant factual

information made available to it, covering the events up to the latest extension of the applicant's detention by the Nasimi District Court's order of 24 October 2014, as upheld on 29 October 2014.

B. Application no. 71200/14

96. The respondent Government were given notice of the application on 2 February 2015 which concerned the applicant's complaints under Article 3 about the alleged lack of adequate medical treatment, the conditions of detention in the Baku pre-trial detention facility, the conditions of transport to and detention in the court-house on 24 October 2014. In his observations after the communication of the application to the respondent Government the applicant raised an additional issue under the same Article, namely the conditions of his transportation from and to the detention facility on 23 January 2015 and 3 February 2015.

97. In the Court's view this new complaint does not concern factual developments with respect to a continuing situation and is not an elaboration of the applicant's original complaint under Article 3 with respect to conditions of transportation, on which the parties have commented (see paragraphs 65-68 above). The Court does not therefore find it appropriate to examine the matter in the present context (see *Seleznev v. Russia*, no. 15591/03, § 56, 26 June 2008). The applicant had the opportunity to lodge new applications in respect of any other complaints relating to the subsequent events in accordance with the requirements set out in Rule 47 of the Rules of Court.

II. JOINDER OF THE APPLICATIONS

98. Given that both applications have been lodged by the same applicant and have the same factual background, the Court decides that the two applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE MEDICAL TREATMENT

99. Relying on Articles 2 and 3 of the Convention, the applicant complained that he was not provided with adequate medical treatment in detention and that his state of health was incompatible with detention. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Tarakhel v. Switzerland* [GC], no. 29217/12, § 55, ECHR 2014 (extracts), and *Radomilja and Others*, cited above, § 126), considers that the applicant's complaint should be examined under Article 3 of the Convention, which reads as follows:

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

A. Admissibility

1. The parties' submissions

100. The Government submitted that the applicant had not exhausted domestic remedies. They argued that the applicant had failed to lodge his complaints before any national authority, including a prosecutor's office and the courts. Notably, the applicant had not appealed against the prosecutor's refusal to order his medical forensic examination.

101. The Government further relied on the decision of the Administrative Economic Court no. 1 dated 24 July 2012 in the case of *A.I. v. the Prison Service of the Ministry of Justice*, in which the court decided to grant A.I.'s request and to place him in hospital for treatment. In the Government's opinion, the decision in question represented an example of the effectiveness of one of several available domestic remedies.

102. The applicant disagreed with the Government's submissions and reiterated his complaints. He submitted that the Government had not demonstrated that there had been an effective remedy available both in theory and in practice capable of providing redress in respect of his complaints and offering reasonable prospects of success. In particular, relying on the case of *Varga and Others v. Hungary* (nos. 14097/12 and 5 others, § 49, 10 March 2015) the applicant argued that with respect to inadequate medical treatment and conditions of detention the existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. However, his complaints before the domestic courts under the Code of Criminal Procedure were left without examination. As regards the judicial remedy under the Code of Administrative Procedure ("the CAP"), the applicant noted that contrary to the relevant provisions of the Code of Civil Procedure setting a one-month time-limit, which had been subsequently repealed following the CAP's adoption, the latter did not provide for specific time-limits and therefore the remedy available in this context could not be considered as effective in theory and practice.

2. The Court assessment

103. The general principles concerning the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention have been recently summarised in the case of *Yunusova and Yunusov v. Azerbaijan* (no. 59620/14, §§ 125-26, 2 June 2016).

104. The Court notes that it has already rejected a similar objection raised by the Government in the *Yunusova and Yunusov* case (cited above)

and sees no reason to reach a different conclusion in the present case. In particular, as regards the remedy provided under the CAP, the Court observed that, although Article 40 of the CAP allows a judge to grant an injunction as a temporary defence measure requiring the respondent party to take or refrain from taking some action, no specific time-limit was provided for the examination of a request for application of a temporary defence measure. As to the domestic court's decision of 24 July 2012 (see paragraph 101 above), the Court has held that a single case cited by the Government was insufficient to show the existence of settled domestic practice that would prove the effectiveness of a remedy. The Court thus concluded on the basis of the information before it that a complaint under the CAP before the domestic courts could not be considered as an effective remedy (ibid., §§ 127-29).

105. The Court also takes cognisance of the fact that the applicant's attempts to obtain redress for the alleged violations of his rights under the Code of Criminal Procedure were to no avail as the domestic courts refused to entertain his complaints for lack of jurisdiction (see paragraphs 69-71 above).

106. The Court therefore dismisses the Government's objection of non-exhaustion of domestic remedies. It further notes that this part of the application 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.

B. Merits

1. The parties' submissions

107. The Government submitted that the applicant had been provided with adequate medical assistance and that his detention was compatible with his state of health. They referred to the applicant's various medical examinations and the medical treatment provided in this connection.

108. The applicant disagreed with the Government's submissions and argued that he had not been provided with the requisite medical assistance, which had led to a deterioration of his health. He further pointed out that he had not been duly informed by the authorities of the results of his medical examinations and the outpatient treatment prescribed had consisted only of painkillers which in fact had worsened his condition owing to their side effects.

2. The Court assessment

109. The Court reiterates that, although Article 3 of the Convention cannot be construed as laying down a general obligation to release detainees on health grounds, it nonetheless imposes an obligation on the State to

protect the physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance. The relevant case-law principles concerning the adequacy of medical assistance provided to the detainees have been recently summarised in *Blokhin v. Russia* [GC], no. 47152/06, §§ 136-138, 23 March 2016).

110. Turning to the present case, the Court observes that following the applicant's complaints lodged on 24 October 2014, he was promptly subject to in-depth medical examinations which revealed the existence of spinal disc herniation, disc protrusions and a number of other, less serious ailments (see paragraphs 53-54 above). The applicant's overall condition was considered satisfactory and did not require surgery (contrast *Kutepov v. Russia*, no. 13182/04, §§ 52 and 60, 5 December 2013, as regards the failure to conduct a timely diagnosis). Contrary to the applicant's submissions, the Court does not discern from the circumstances of the case that his detention was marked by a significant worsening of his condition (compare, for instance, *Yunusova and Yunusov,* cited above, § 149, and *Kutepov*, cited above § 55). The applicant was examined by doctors at fairly regular intervals and his medical examinations did not reveal any serious health issues which would have required a particular form of treatment and which the authorities had ultimately failed to provide. In the Court's view, the applicant did not put forward sufficient and convincing arguments disclosing any serious failings on the part of the national authorities to provide him with the requisite medical care or that the assistance provided failed to meet the standard of adequate care.

111. On the basis of the evidence before it and assessing the relevant facts as a whole, the Court cannot therefore conclude that the medical care available to the applicant was inadequate to such a degree as to cause him suffering reaching the minimum level of severity required by Article 3 of the Convention (compare *Insanov v. Azerbaijan*, no. 16133/08, § 134, 14 March 2013).

112. Finally, even if the Court were to accept the applicant's submission that he had not been duly informed about the results of his medical examinations (see paragraph 108 above), this alleged shortcoming alone is insufficient to conclude that the medical care was inadequate to such a degree as to amount to "ill-treatment" (compare *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 131, 9 November 2010).

113. Accordingly, there has been no violation of Article 3 of the Convention on account of the applicant's medical treatment in detention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION IN THE BAKU PRE-TRIAL DETENTION FACILITY

114. The applicant complained under Article 3 of the Convention about the conditions of detention in the Baku pre-trial detention facility.

A. Admissibility

115. The Government submitted that the applicant had failed to exhaust domestic remedies. The applicant disagreed with the Government's submissions (see paragraph 102 above).

116. The Court reiterates that the existence of a preventive remedy is indispensable for the effective protection of individuals against the kind of treatment prohibited by Article 3. The special importance attached by the Convention to that provision requires, in the Court's view, that the Contracting Parties establish, over and above a compensatory remedy, an effective mechanism in order to put an end to any such treatment rapidly (see, for instance, *Varga and Others*, cited above, § 49, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 98, 10 January 2012).

117. The Court notes that in the present case when the applicant lodged his application with the Court complaining, *inter alia*, about his conditions of detention, the applicant was still in detention in allegedly poor conditions and thus required a preventive remedy capable of putting an end to the ongoing violation of his right not to be subjected to inhuman or degrading treatment, in particular, leading to his removal from inadequate prison conditions or improvement of material conditions of detention (see *Moxamed Ismaaciil and Abdirahman Warsame v. Malta*, nos. 52160/13 and 52165/13, §§ 45-46, 12 January 2016). In the context of medical treatment, in order to be effective, a preventive remedy must, in particular, ensure a prompt and diligent handling of prisoners' complaints (see *Ananyev and Others*, cited above, § 214). The Court has previously expressed its concern as regards delays in the context of complaints about conditions of detention and, particularly, in respect of those concerning inadequate medical treatment, where irreparable damage may be caused over time (see *Mikalauskas v. Malta*, no. 4458/10, § 51, 23 July 2013). In the present case, as the Court has already noted (see paragraph 104 above), the remedy under the CAP referred to by the Government did not provide for specific time-limits and the Government did not submit sufficient information showing there was a settled domestic practice of examination of such complaints in a speedy and diligent manner in order to put an end to the treatment complained of rapidly. In the Court's view it would be contrary to the letter and spirit of Article 3 of the Convention to allow a person to languish in harsh conditions of detention awaiting the outcome of proceedings which

are not bound by any time-limits in law or in practice and which may last for prolonged periods of time.

118. The Government did not forward any other remedy capable of preventing the alleged violation or its continuation in a timely and effective manner.

119. The Court therefore dismisses the Government's objection of non-exhaustion of domestic remedies. It further notes that this part of the application 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.

B. Merits

1. The parties' submissions

120. The Government submitted that the conditions of the applicant's detention had been compatible with Article 3 of the Convention.

121. The applicant reiterated his complaints and maintained that his conditions of detention in the Baku pre-trial detention facility amounted to inhuman and degrading treatment.

2. The Court assessment

(a) General principles

122. The Court reiterates that it adopts conclusions after evaluating all the evidence, including such inferences as may flow from the facts and the parties' submissions. As regards the assessment of such evidence, the Court refers to its well-established standard of proof in conditions-of-detention cases which has recently been summarised in *Muršić v. Croatia* [GC], no. 7334/13, §§ 127-28, 20 October 2016. In particular, the Court is mindful of the objective difficulties experienced by applicants in collecting evidence to substantiate their claims about the conditions of their detention. Still, in such cases applicants must provide a detailed and consistent account of the facts complained of. Once a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a prima facie case of ill-treatment, has been made, the burden of proof is shifted to the respondent Government, who alone have access to information capable of corroborating or refuting these allegations. They are required, in particular, to collect and produce relevant documents and provide a detailed account of an applicant's conditions of detention. Furthermore, the Court also refers to the general principles and standards concerning the assessment of prison overcrowding, set out in the *Muršić* judgment (cited above, §§ 136-141).

(b) Conditions of detention from 9 to 12 August 2014

123. Turning to the present case, the Court notes that the applicant complained about most aspects of the conditions of his detention in the Baku pre-trial detention facility from 9 to 12 August 2014. However, there is no need for the Court to establish the veracity of each and every allegation as the starting point for its assessment will be the personal space afforded to the applicant. The Court notes that the applicant provided a detailed account of the conditions of his detention (see paragraph 45 above). Among other things, he alleged that he had been placed in an admission cell, measuring about 10 sq. m, where he had been held with eight other inmates, affording 1.1 sq. m of personal space per inmate. The Government did not make any specific submissions concerning the applicant's detention in this cell during the above period.

124. In this connection, the Court reiterates that when the personal space available to a detainee falls below 3 sq. m of floor surface, the lack of personal space is considered so severe that a strong presumption of a violation of Article 3 arises. The burden of proof is on the respondent Government which could, however, rebut that presumption by demonstrating that there were factors capable of adequately compensating for the scarce allocation of personal space (ibid., § 137). However, in the present case the Government did not present any arguments that would refute the applicant's allegations or rebut the above presumption of a violation of Article 3.

125. Paragraph 138 of the *Muršić* judgment lists the factors which must be cumulatively met in order to rebut the presumption of a violation. The first of those factors requires that "the reductions in the required minimum personal space of 3 sq. m are short, occasional and minor" (ibid., § 138 (1)). In the present case, the applicant was afforded only 1.1 sq. m of personal space during this period, which was so far below the required standard of 3 sq. m that it could not be considered a "minor" reduction in personal space. Furthermore, as argued by the applicant and not specifically disputed by the Government, the applicant's situation was aggravated by the fact that he had to share beds with other detainees and had no access to outdoor exercise. Moreover, the cell lacked adequate ventilation and sanitary facilities (ibid., § 139).

126. Thus, in the light of the material submitted to it by the parties and having regard to its case-law on the subject cited above, the Court accepts the applicant's account and finds that, despite the relatively short period of time involved, the conditions of his detention from 9 to 12 August 2014 subjected him to hardship going beyond the unavoidable level of suffering inherent in detention and amounted to degrading treatment.

127. There has accordingly been a violation of Article 3 of the Convention on account of the applicant's conditions of detention from 9 to 12 August 2014.

(c) Conditions of detention as from 12 August 2014

128. The Court observes that it is common ground between the parties that the applicant was detained with three other detainees in a cell which was designed to accommodate four persons. At the same time, the applicant disagreed with the Government as regards the measurements of the cell, which according to the applicant was "around 12-14 sq. m" and not 17.82 sq. m as indicated by the Government (see paragraphs 46-49 above). However, the Court does not deem it necessary to resolve this disagreement between the parties for the following reasons.

129. Even assuming that the cell measured "12-14 sq. m" as argued by the applicant, he disposed of at least 3 sq. m of personal space.

130. The Court reiterates that in cases where a prison cell – measuring in the range of 3 to 4 sq. m of personal space per inmate – is at issue the space factor remains a weighty factor in the Court's assessment of the adequacy of conditions of detention. The Court has to determine whether the space factor is coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature, the possibility of using the toilet in private, and compliance with basic sanitary and hygienic requirements (ibid., § 139).

131. As regards the sanitary and hygiene conditions, the Court finds it established, based on the parties' submissions, that the toilet in the cell was separated by a door, and that cold water was available in the cells and inmates had access to a hot shower twice a week (see paragraphs 46-49 above).

132. Furthermore, it was not in dispute that there was a small window in the cell and a yard adjacent to the cell, available until 4 p.m. every day, where the applicant had unobstructed access to natural light, fresh air and outdoor exercise (see paragraphs 46 and 49 above).

133. The applicant also complained about the temperatures inside the cell. However, he did not substantiate his complaint to a sufficient degree. The Court therefore finds it difficult to determine precisely the severity of the situation. Moreover, the applicant admitted himself that the detention facility had been equipped with a heating system which had been turned on 15 November (compare *Insanov v. Azerbaijan*, cited above, § 125).

134. In sum, having examined the facts as presented by the parties, the Court does not exclude that the applicant may have endured some distress and hardship, as a result of his detention in the conditions described above. Nevertheless, taking into account the cumulative effect of those conditions, the Court does not consider that they reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention.

135. Accordingly, there has been no violation of Article 3 of the Convention on account of the applicant's conditions of detention as from 12 August 2014.

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF TRANSPORT AND DETENTION IN THE COURT-HOUSE

136. The applicant complained under Article 3 of the Convention about the conditions of transport to and detention in the court-house on 24 October 2014.

137. The Government submitted that the applicant had failed to exhaust domestic remedies in respect of his complaints. The applicant disagreed with the Government's submissions and maintained his complaints.

138. The Court observes that unlike the conditions of detention in the Baku pre-trial detention facility, the applicant's conditions of transport and detention in the court-house on 24 October 2014 did not concern a continuing situation, but rather a situation where an alleged violation of Article 3 had already occurred, and thus was susceptible of being redressed by a compensatory remedy (see *Ananyev and Others*, cited above, § 221). The availability of such a remedy is particularly important in view of the subsidiarity principle, so that individuals are not systematically forced to refer to the Court in Strasbourg complaints that require the finding of basic facts or the calculation of monetary compensation (ibid., § 221).

139. In this connection, the Court reiterates that the Law on Complaints against Acts and Omissions Infringing Individual Rights and Freedoms provides for a judicial avenue for challenging any act or omission by a public authority infringing an individual's rights or freedoms (see *Mammadov (Jalaloglu) v. Azerbaijan*, no. 34445/04, § 52, 11 January 2007). Both Article 46 of the Constitution of the Republic of Azerbaijan and Article 3 of the Convention, which is directly applicable in the domestic legal system, prohibit inhuman and degrading treatment (ibid.). Furthermore, under the CAP, which replaced the relevant provisions of the Code of Civil Procedure, an action may be brought before the courts to challenge actions of administrative organs (see *Yunusova and Yunusov*, cited above, §§ 96-97). In particular, Articles 2 § 2 (7) and 34 § 1 of the CAP provide for the possibility to claim compensation for damage sustained as a result of unlawful actions of administrative organs. Therefore, relying on these provisions, the applicant could have lodged a lawsuit directly with the domestic courts, complaining of the alleged poor conditions of his transport to and detention in the court-house and claiming compensation for the alleged violations. However, the applicant has not attempted to do so. Moreover, he has not shown convincingly that such steps would be bound to be ineffective. Mere doubts about the effectiveness of a remedy are not

sufficient to dispense with the requirement to make normal use of the available avenues for redress (see *Kunqurova v. Azerbaijan* (dec.), no. 5117/03, 3 June 2005).

140. The Court therefore accepts the Government's objection and concludes that these complaints must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

VI. ALLEGED VIOLATIONS OF ARTICLE 5 §§ 1 AND 3 OF THE CONVENTION

141. Relying on Article 5 §§ 1 and 3 of the Convention, the applicant complained that he had been arrested and detained in the absence of a "reasonable suspicion" that he had committed a criminal offence. He further complained that the domestic courts had failed to provide relevant and sufficient reasons justifying the necessity of his continued detention. Article 5 §§ 1 (c) and 3 of the Convention reads:

> "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:
>
> ...
>
> (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."

A. Admissibility

142. The Court notes that this part of 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

(a) The applicant

143. The applicant submitted that the prosecuting authorities and the domestic courts had failed to provide reasonable and well-documented evidence that he had committed any of the criminal offences with which he had been charged. Relying, in particular, on the cases of *Ilgar Mammadov v. Azerbaijan* (cited above, § 88) and *Stepuleac v. Moldova* (no. 8207/06, § 73, 6 November 2007) the applicant argued that in their applications for remand in custody the prosecuting authorities, by referring only to unspecified material of the criminal case file, had failed to show "basic" or "relevant facts" pertaining to each alleged crime which would justify the reasonableness of his detention. Furthermore, in their decisions the domestic courts had merely reiterated the prosecuting authorities' arguments without specifying which information in the criminal case file had demonstrated that he might have committed the crimes of which he had been accused.

144. Notably, as regards the charges of abuse of power and illegal entrepreneurship, the applicant claimed that he had been elected and had acted as the chairman of the Association since 1999 when it had been founded. Since then, he had sent numerous letters on behalf of the Association to various state authorities, including the Ministry of Justice, concerning the registration of grant agreements signed by the applicant on behalf of the Association. The Ministry had registered these grants and informed the applicant accordingly. It had never informed the applicant that he had lacked the legal authority to act on behalf of the Association. In support of his submissions, the applicant submitted copies of the decision of the Association's general assembly of 18 June 1999 to elect the applicant as its chairman as well as the letters signed by the applicant on behalf of the Association to the Ministry of Justice in relations to various grant agreements signed with different donors.

145. According to the applicant, it was only in April 2014, following the introduction of amendments to the Law on State Registration of Legal Entities and the State Register in February the same year, that the Ministry refused to register the grant agreement submitted by the applicant on the grounds that the latter could not act on behalf of the Association as he had failed to inform the Ministry of his election as chairman of the Association. The applicant's further requests to register himself as its chairman were also refused by the Ministry because the letters had not been signed by the authorised person.

146. As to the applicant's failure to register various grant agreements with the Ministry, the applicant argued that in fact he had applied to have them registered. Moreover, one of those agreements had been duly

registered by the Ministry and published on its online database, before being removed in 2014. In this context, the applicant submitted a copy of the cached version of the database containing information on the grant agreement concluded by the Association in 2012.

147. He also argued that as the Government disputed the fact that he held any managing position in the Association and that he was its founder, he could not be suspected of having committed the crime of abuse of power.

148. Furthermore, the applicant reiterated his complaint under Article 5 § 3 and maintained that the domestic courts had failed to assess the lawfulness of his pre-trial detention, including whether there had been a reasonable suspicion, to provide "relevant and sufficient" reasons justifying his pre-trial detention and to properly consider whether alternative preventive measures could have been applied.

(b) The Government

149. The Government submitted that the applicant had been arrested on suspicion of having committed offences considered as serious crimes under national law and that his detention had been based on a reasonable suspicion.

150. The Government further argued that the applicant's detention had been justified and that the domestic courts had given sufficient and relevant reasons for his detention. As regards the applicant's requests for release on bail or replacement of his pre-trial detention by house arrest, they had not been granted by the domestic courts as there had been a risk that, if not detained, the applicant would abscond and influence the criminal proceedings.

(c) Third parties

151. Third-party comments submitted by the Council of Europe Commissioner for Human Rights, as well as by the Helsinki Foundation for Human Rights, the Human Rights House Foundation and Freedom Now concerned the situation of human rights defenders in Azerbaijan and the difficulties faced by NGOs as a result of the recent legislative amendments. A detailed description of the above-mentioned comments can be found in the Court's judgment in *Rasul Jafarov* (cited above, §§ 99-113).

2. The Court's assessment

(a) General principles

152. The applicable general principles were recently summarised by the Court in the case of *Rasul Jafarov* (cited above, §§ 114-18). Notably, the words "reasonable suspicion" mean the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. In addition, the existence of such a suspicion

requires that the facts relied on can reasonably be considered criminal behaviour under domestic law. Thus, clearly there could not be a "reasonable suspicion" if the acts held against a detained person did not constitute an offence at the time they were committed.

(b) Application to the present case

153. The Court observes that the charges brought against the applicant in this case (see paragraphs 23 and 36 above) are similar to those pressed against the applicant in the case of *Rasul Jafarov* (cited above, §§ 16 and 30). Like the latter case, the applicant was charged with various crimes on two occasions: on 8 August 2014 – with crimes of illegal entrepreneurship, tax evasion and abuse of power – and on 12 December 2014 – with crimes of embezzlement and forgery by an official. The only difference in the present case lies in the fact that unlike the NGO co-founded by Mr Jafarov, the applicant's Association was formally registered with the Ministry of Justice and the applicant was accused of failing to inform that Ministry of his being appointed chairman of the Association. The Court will proceed to examine the facts giving rise to the above charges in turn. It will do so in the light of the harsh and restrictive legislative framework governing the registration and operation of non-governmental organisations (ibid., § 120).

(i) Charges of abuse of power, illegal entrepreneurship and tax evasion

154. The Court considers that, as in the case of *Rasul Jafarov*, the description of the three original charges brought against the applicant on 8 August 2014 lacked a certain level of coherence, order and clarity that could be expected of a document of this nature. In particular, the description consisted of a single sentence spanning about one page of printed text (ibid., § 121). Notably, it can be discerned from that description that the applicant was accused of failing to inform the relevant executive authority of his appointment as chairman of the Association in accordance with the Law on State Registration and signing various grant agreements on behalf of the Association without having the legal authority to do so.

155. As regards the charges of abuse of power, the Court notes that the applicant submitted a copy of the decision of the Association's annual general meeting of 18 June 1999 to elect him chairman of the Association. The authenticity of this document was not disputed by the Government. Furthermore, the applicant argued that following the introduction of amendments to the Law on State Registration which required, *inter alia*, reporting of changes to founding charters of legal entities, he attempted to inform the Ministry of Justice of this fact but to no avail. The Government also did not refute this claim or submit any information to the contrary.

156. Furthermore, it is not clear from the domestic decisions and the Government' submissions why the applicant had to inform the executive

authority of his appointment as chairman of the Association given that this fact had taken place long before the introduction of relevant legislative amendments providing for such reporting obligations.

157. However, even leaving aside these discrepancies and assuming that the applicant had failed to duly inform the authorities of his election as chairman, the Court does not see how such a failure of a purely administrative nature could have given rise to a reasonable suspicion that he had committed a criminal offence.

158. Turning to the facts which constituted the basis for the charges of tax evasion and illegal entrepreneurship, specifically the applicant's failure to register the grant agreements in accordance with domestic law, the applicant argued that he had duly informed the authorities and submitted copies of the Association's letters to the Ministry of Justice asking the latter to register certain grant agreements, and extracts from the Ministry's database concerning the registration of one of the grants. The Government did not submit any comments with respect to these documents.

159. However, even assuming that the applicant failed to comply with the relevant procedure, the Court restates that in the case of *Rasul Jafarov* (cited above) it 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. Furthermore, the above-mentioned facts were not sufficient to give rise to a

> suspicion that the applicant had sought to "obtain unlawful advantage for himself or for third parties", which was one of the constituent elements of the criminal offence of "abuse of power" under Article 308 of the Criminal Code ..."

160. 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.

(ii) Charges of embezzlement and forgery

161. As for the additional charges of embezzlement and forgery brought against the applicant on 12 December 2014, the Court notes that they were brought after the latest domestic court order of 24 October 2014 extending the applicant's pre-trial detention. As such, all previous decisions ordering and extending the applicant's pre-trial detention had been based solely on the original charges, and therefore the new charges were of no significance to the assessment of the reasonableness of the suspicion underpinning the applicant's detention during the period falling within the scope of the present case.

162. In any event the Court observes that as regards the charges of embezzlement, the prosecuting authorities relied on the fact that the applicant transferred various amounts from the Association's bank accounts to the account of one of the Association's employees with a view to their subsequent withdrawing it. In this regard, the Court notes that the money was given to the applicant voluntarily by donors under the grant agreements. There was no information in the domestic decisions that the donors had ever complained about misappropriation of the sums by the applicant and that they had joined the criminal proceedings against the applicant as the victims of the crime.

163. As to the charge of forgery, the Court observes that the applicant was accused of inserting false information in the Association's cashbook concerning payments to various employees. However, 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.

(iii) Conclusion

164. Having regard to the above considerations, 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. Accordingly, the Court concludes that during the period in question the applicant was deprived of his liberty in the absence of a "reasonable suspicion" of his having committed a criminal offence.

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

166. The above finding makes it redundant to assess whether the reasons given by the domestic courts for the applicant's 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 any issues under Article 5 § 3 of the Convention (see similarly *Rasul Jafarov*, cited above, § 135).

VII. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

167. The applicant complained that the domestic courts had failed to address his specific arguments in support of his release in breach of Article 5 § 4 of the Convention, which reads as follows:

> "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

168. 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

169. The applicant reiterated his complaint and maintained that he had not been afforded an effective judicial review of the lawfulness of his detention.

170. The Government, referring to the relevant provisions of the Code of Criminal Procedure, contested that argument and argued that the applicant had had at his disposal an effective procedure by which he could have challenged the lawfulness of his detention.

2. The Court's assessment

(a) General principles

171. The relevant general principles were recently reiterated in *Rasul Jafarov*, cited above, §§ 140-42. In particular, Article 5 § 4 of the Convention entitles arrested or detained persons to a review of the

procedural and substantive conditions which are essential for the "lawfulness" – in Convention terms – of the deprivation of their liberty. This means that the competent court has to consider not only compliance with the procedural requirements of domestic law, but also the reasonableness of the suspicion underpinning the arrest and the legitimacy of the purpose pursued by the arrest and the ensuing detention.

(b) Application to the present case

172. The Court observes that, as in the case of *Rasul Jafarov*, cited above, the domestic courts in the present case consistently failed, in the exact same manner, to verify the existence of reasonable suspicion underpinning the applicant's arrest and detention and the legitimacy of its purpose. In essence, the role of the domestic courts was limited to automatic endorsement of the prosecution's applications without any genuine and independent review of the "lawfulness" of the applicant's detention.

173. Having regard to the above, the Court concludes that the applicant was not afforded proper judicial review of the lawfulness of his detention. Accordingly, there has been a violation of Article 5 § 4 of the Convention (ibid., §§ 143-44).

VIII. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

174. The applicant complained under Article 8 of the Convention of the search of his home and of the Association's office and the seizure of all the documents and electronic items. Article 8 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

175. 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

176. The applicant argued that the interference with his right to respect for his private and family life, home and correspondence had not been prescribed by law and had not been necessary in a democratic society.

177. The Government maintained that the search at the applicant's home and the Association's office had been conducted in accordance with domestic law and had been necessary in the interest of the criminal investigation of the applicant's case in order collect evidence. The Government also claimed that on 25 October 2014 the prosecuting authorities had returned to the applicant's lawyer a large part of the seized documents, including those related to his work before the Court.

2. The Court's assessment

(a) Whether there has been an interference

178. In the present case, the search and seizure were conducted in the applicant's home (see paragraph 38 above), as well as the premises of the Association (see paragraphs 37 and 39 above). The Court notes that the applicant was the chairman of the Association (see paragraph 8 above) and that it is undisputed that he used the premises of the Association for conducting his professional activities as a lawyer. The documents seized from the Association's premises included case files concerning over a hundred applications pending before the Court and documents related to the proceedings before the domestic courts, in which the applicant acted as a legal representative (see paragraph 39 above). According to the Court's case-law, the search of a lawyer's office, including documents and electronic data, amounts to an interference with his "private life", "home" and "correspondence" (see *Niemietz v. Germany*, 16 December 1992, §§ 29-33, Series A no. 251-B; *Sallinen and Others v. Finland*, no. 50882/99, §§ 70-72, 27 September 2005; and *Aleksanyan v. Russia*, no. 46468/06, § 212, 22 December 2008). Accordingly, the search and seizure both in the home and office of the applicant constituted an interference with his rights under Article 8 of the Convention.

(b) Whether the interference was justified

179. 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*, cited above, § 31). 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.

(i) Lawfulness

180. As regards the question of whether the interference was "in accordance with the law", the Court does not find it necessary to determine this issue since in any event the impugned interference breaches Article 8 for other reasons outlined below.

(ii) Legitimate aim

181. The Court has repeatedly held that persecution and harassment of members of the legal profession strikes at the very heart of the Convention system. Therefore the searching of lawyers' premises should be subject to especially strict scrutiny (see *Annagi Hajibeyli v. Azerbaijan*, no. 2204/11, § 68, 22 October 2015, and *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, § 669, 13 November 2003).

182. With that in mind 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 *Parrillo v. Italy* [GC], no. 46470/11, § 163, ECHR 2015).

183. Turning to the present case, the Court observes that the Government argued that the search had been aimed at investigating the applicant's case and collecting evidence, which can be linked to the aim of prevention of crime within the meaning of Article 8 § 2.

184. In this context, the Court notes that the search at the applicant's home and office had been authorised by the Nasimi District Court a day before the applicant was formally charged with the criminal offences. The search and seizure order of 7 August 2014 was issued by the court following a request by the prosecution (see paragraphs 36-39 above). The court justified the search by merely referring in vague terms to the criminal investigation into "breaches of legislation discovered in the activities of a number of non-governmental organisations" without asserting any specific facts related to the suspected crimes of abuse of power and forgery (see paragraph 39 above). It does not therefore appear from the court's succinct decision that it satisfied itself that there were reasonable grounds for suspecting that the commission of these crimes had occurred and that the relevant evidence might be found in this regard at the premises to be searched (compare *Buck v. Germany*, no. 41604/98, § 41, ECHR 2005-IV).

185. Furthermore, the Court has found that the administrative irregularities allegedly committed by the applicant with respect to the receipt and use of the grants by the Association, for which the applicant was prosecuted and detained during the period at issue, could not give rise to liability under criminal law (see paragraphs 159-60 and 164 above).

186. Thus, having regard to the restrictive definition of the exceptions provided by Article 8 § 2 and the rigorous supervision by the Court, it cannot accept that the interference complained of pursued the legitimate aim of prevention of crime within the meaning of this Article. The Government has not put forward and the Court does not see any other justification for the interference at issue.

187. Accordingly, the Court finds that, in the particular circumstances of the present case, the search and seizure at the applicant's home and office did not pursue any of the legitimate aims enumerated in paragraph 2 of Article 8.

188. 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, *mutatis mutandis*, *Khuzhin and Others v. Russia*, no. 13470/02, §§ 117-18, 23 October 2008).

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

IX. ALLEGED VIOLATION OF ARTICLE 18 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLES 5 AND 8

190. Relying on Article 18 of the Convention, the applicant complained that his Convention rights had been restricted for purposes other than those prescribed in the Convention. In particular, his deprivation of liberty and the seizure of the files relating to the pending cases before the Court had the purpose of punishing and silencing him as a critic of the Government and a human-rights defender and to prevent him from representing numerous applicants before the Court in high-profile cases relating to election irregularities and deprivations of property. 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

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

B. Merits

1. The parties' submissions

(a) The applicant

192. The applicant maintained that the restrictions applied in his case were aimed at punishing and silencing him as a critic of the Government, a human-rights defender and a practicing lawyer before the Court, thereby neutralising him and preventing him from continuing human rights activities. He argued that the totality of the evidence in the present case was sufficient to rebut the general presumption that public authorities had acted in good faith. The facts of the case demonstrated convincingly that the real aim of the authorities had not been the same as that proclaimed.

193. The applicant submitted that the situation in his case was similar to that of *Ilgar Mammadov* in that the authorities had acted in the same manner.

194. Moreover, his detention as well as the search and seizure of his home and office should be viewed as part of persecution of human-rights defenders and NGO activists in the country which had begun in December 2013 and included their arrests, travel bans, freezing of their bank accounts and disparaging public statements by various high-ranking officials labelling them as "traitors". The very public support from a number of State officials for his prosecution and the prosecution of others indicated that the measures taken by the authorities had had political motives.

(b) The Government

195. Relying on the cases of *Khodorkovskiy v. Russia* (no. 5829/04, 31 May 2011) and *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, 25 July 2013) the Government argued that the applicant's allegations were too wide and far-reaching. He did not complain of an isolated incident, but tried to demonstrate that the whole legal machinery of the respondent State had been misused *ab initio*, and that from beginning to end the authorities had been acting in bad faith and with blatant disregard for the Convention. In essence, the applicant was trying to persuade the Court that everything in his case had been contrary to the Convention, and that the criminal proceedings against him had therefore been invalid. That allegation was a serious one, because it assailed the general presumption of good faith on the part of the public authorities and required particularly weighty evidence in support. None of the accusations against the applicant had been political. He had not been an opposition leader or a public official. The acts which had been imputed to him had not been related to his participation in political life, real or imaginary – he had been prosecuted for common criminal offences, such as tax evasion and fraud. The Government submitted that the restrictions imposed by the State in the present case

pursuant to Article 5 and 8 of the Convention had not been applied for any purpose other than one envisaged by those provisions, and strictly for the proper investigation of serious criminal offences allegedly committed by the applicant.

(c) Third parties

196. Submissions by the third parties, which also pertain to the complaint under Article 18 of the Convention, are referred to in paragraph 151 above.

2. The Court's assessment

(a) General principles

197. The general principles concerning the interpretation and application of Article 18 of the Convention have recently been set out by the Grand Chamber in its judgment in *Merabishvili v. Georgia* ([GC], no. 72508/13, 28 November 2017, §§ 287-317) and may be summarised as follows.

198. In a similar way to Article 14, Article 18 of the Convention has no independent existence. It can only be applied in conjunction with an Article of the Convention or the Protocols thereto which sets out or qualifies the rights and freedoms that the High Contracting Parties have undertaken to secure to those under their jurisdiction. Article 18 prohibits the High Contracting Parties from restricting the rights and freedoms enshrined in the Convention for purposes not prescribed by the Convention itself, and to this extent it is autonomous. Therefore, as is also the position in regard to Article 14, there can be a breach of Article 18 even if there is no breach of the Article in conjunction with which it applies (ibid., §§ 287-88).

199. The mere fact that a restriction of a Convention right or freedom does not meet all the requirements of the clause that permits it does not necessarily raise an issue under Article 18. Separate examination of a complaint under that Article is only warranted if 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 (ibid., § 291).

200. A right or freedom is sometimes restricted solely for a purpose which is not prescribed by the Convention. But it is equally possible that a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention; in other words, that it pursues a plurality of purposes. In these circumstances, a restriction can be compatible with the substantive Convention provision which authorises it because it pursues an aim permissible under that provision, but still infringe Article 18 because it was chiefly meant for another purpose that is not prescribed by the Convention; in other words, if that other purpose was predominant. Conversely, if the prescribed purpose was the main one, the restriction does not run counter to

Article 18 even if it also pursues another purpose. Which purpose is predominant in a given case depends on all the circumstances. In assessing that point, the Court will have regard to the nature and degree of reprehensibility of the alleged ulterior purpose, and bear in mind that the Convention was designed to maintain and promote the ideals and values of a democratic society governed by the rule of law (ibid., §§ 292-307).

201. As regards the questions of proof, the Court can and should adhere to its usual approach to proof rather than special rules (ibid., § 310).

202. The first aspect of that approach is that, as a general rule, the burden of proof is not borne by one or the other party because the Court examines all material before it irrespective of its origin, and because it can, if necessary, obtain material of its own motion (ibid., § 311).

203. The second aspect of the Court's approach is that the standard of proof before it is "beyond reasonable doubt". That standard, however, is not co-extensive with that of the national legal systems which employ it. First, such proof can follow from the coexistence of sufficiently strong, clear and concordant inferences or similar unrebutted presumptions of fact. Secondly, the level of persuasion required to reach a conclusion is intrinsically linked to the specificity of the facts, the nature of the allegation made, and the Convention right at stake (ibid., § 314).

204. The third aspect of the Court's approach is that the Court is free to assess not only the admissibility and relevance but also the probative value of each item of evidence before it. When assessing evidence it is not bound by formulae and adopts the conclusions supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. The Court is also sensitive to any potential evidentiary difficulties encountered by a party. There is therefore no reason for the Court to restrict itself to direct proof in relation to complaints under Article 18 of the Convention or to apply a special standard of proof to such allegations (ibid., §§ 315-16).

205. Circumstantial evidence in this context means information about the primary facts, or contextual facts or sequences of events which can form the basis for inferences about the primary facts. Reports or statements by international observers, non-governmental organisations or the media, or the decisions of other national or international courts are often taken into account, in particular, to shed light on the facts, or to corroborate findings made by the Court (ibid., § 317).

(b) Application to the present case

206. At the outset, the Court notes that it has already found that the applicant's arrest and pre-trial detention were not carried out for a purpose prescribed under Article 5 § 1 (c) of the Convention as the charges against him were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention (see paragraph 164 above). Therefore, no

issue arises in the present case with respect to the 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).

207. Indeed, the Court observes that the combination of the relevant case-specific facts in the applicant's case is similar to that of *Rasul Jafarov* (cited above) where proof of ulterior purpose derived from a juxtaposition of the lack of suspicion with contextual factors.

208. Firstly, as regards the applicant's status, the Court notes that it is not disputed between the parties that the applicant is a human-rights defender and, more specifically, a human-rights lawyer (see also § 1 of the Parliamentary Assembly's Resolution 2225 (2018) cited in paragraph 91 above). In line with the international materials cited above (see paragraphs 88-92 above) the Court attaches particular importance to the special role of human-rights defenders in promoting and defending human rights, including in close cooperation with the Council of Europe, and their contribution to the protection of human rights in the member States. The Court also takes note of the fact that the applicant is the legal representative before the Court in a large number of cases and has submitted on behalf of the Association communications to the Committee of Ministers concerning the execution of the Court's judgments.

209. Secondly, as far as the charges against the applicant are concerned, the Court has found above that they were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention (see paragraphs 164-165 above). The applicant was charged with serious criminal offences whose core constituent elements could not reasonably be found in the existing facts.

210. Thirdly, the Court notes that the applicant's arrest was accompanied by stigmatising statements made by public officials against the local NGOs and their leaders, including the applicant, who were labeled as "traitors" and a "fifth column" (see paragraphs 12-17 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.

211. Fourthly, as regards the search of the applicant's home and office, the Court has found above that it did not pursue any of the legitimate aims enumerated in paragraph 2 of Article 8 of the Convention (see paragraph 187 above). Furthermore, the Court is struck by the arbitrary manner in which the search and seizure took place at the applicant's home and office. Notably, during the search at his office not only did the authorities seize documents related to the Association's activities, but they also took case files covered by lawyer-client confidentiality, in particular, those related to the applications pending before the Court, in disregard of legal professional privilege. In this connection, the Court reiterates that it has already

concluded in the case of *Annagi Hajibeyli* (cited above, §§ 64-79) that the respondent State has failed to comply with its obligations under Article 34 of the Convention on account of the seizure from the office of the applicant in the present case of the entire case file relating to Mr Hajibeyli's pending case before the Court.

212. Fifthly, the general context of the increasingly harsh and restrictive legislative regulation of NGO activity and funding cannot simply be ignored in a case like the present one, where such a situation has led to an NGO activist being prosecuted for an alleged failure to comply with legal formalities of an administrative nature while carrying out his work (see *Rasul Jafarov*, cited above, § 159). The Court reiterates that the way in which national legislation enshrines the freedom of association and its practical application by the authorities reveal the state of democracy in the country concerned (see *Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan*, no. 37083/03, § 52, ECHR 2009). It goes without saying that, while the States may have legitimate reasons to monitor financial operations in accordance with international law with a view to preventing money laundering and terrorism financing, the ability of an association to receive and use funding in order to be able to promote and defend its cause constitutes an integral part of the right to freedom of association.

213. The Court also notes the repercussions the applicant's detention and the seizure of the documents related to the Association activities had on the exercise of his right to freedom of association. As a result of the *de facto* criminalisation of his activities and the measures taken against him in this context, which, as the Court has found above, did not have any legitimate purpose, the applicant was prevented from conducting his NGO activity in any meaningful way. Moreover, the Court cannot lose sight of the chilling effect of those measures on the civil society at large, whose members often act collectively within NGOs and who, for fear of prosecution, may be discouraged from continuing their work of promoting and defending human rights.

214. In this connection, the applicant's situation cannot be viewed in isolation. Several notable human-rights activists who have cooperated with international organisations for the protection of human rights, including, most notably, the Council of Europe, have been similarly arrested and charged with serious criminal offences entailing heavy prison sentences. These facts support the applicant's and the third parties' argument that the measures taken against him were part of a larger campaign to "crack down on human-rights defenders in Azerbaijan, which had intensified over the summer of 2014" (compare *Rasul Jafarov*, cited above, § 161).

215. The totality of the above circumstances – specifically, the applicant's status as a lawyer representing applicants before the Convention institutions, the nature and substance of the charges brought against him, the statements made by public officials, the arbitrary manner in which the

search and seizure took place, the general context of the legislative regulation of NGO activity, the repercussions on the applicant's right to freedom of association and the general situation concerning human-rights activists in the country – 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 applicant for his activities in the area of human rights as well as to prevent him from continuing those activities (see *Rasul Jafarov*, cited above, §§ 157-62). In the light of these considerations, the Court finds that the restrictions of the applicant's rights were imposed for purposes other than those prescribed by Articles 5 § 1 (c) and 8 § 2 of the Convention.

216. There has accordingly been a violation of Article 18 of the Convention taken in conjunction with Articles 5 and 8.

X. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

217. The applicant further complained under Article 11 that his right to freedom of association had been violated because his arrest and detention had been intended to silence him as an NGO activist. 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."

218. 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.

219. 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. APPLICATION OF ARTICLE 46 OF THE CONVENTION

220. Having regard to the nature of the violations found by the present judgment and the recurrence of similar violations, the Court finds it

appropriate to examine the present case under Article 46 of the Convention which reads as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution. ..."

221. The Court reiterates that, by virtue of Article 46 of the Convention, the Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, with execution being supervised by the Committee of Ministers of the Council of Europe. It follows, *inter alia*, that a judgment in which the Court finds a breach imposes on the respondent State a legal obligation, whether or not the applicant has requested just satisfaction, to select, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. Subject to monitoring by the Committee of Ministers, the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46, provided that such means are compatible with the conclusions and the spirit of the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Broniowski v. Poland* [GC], no. 31443/96, § 192, ECHR 2004-V; *Lukenda v. Slovenia*, no. 23032/02, §§ 89-98, ECHR 2005-X; *Apostol v. Georgia*, no. 40765/02, §§ 70-71, ECHR 2006-XIV; *Abuyeva and Others v. Russia*, no. 27065/05, §§ 235-43, 2 December 2010; *Emre v. Switzerland (no. 2)*, no. 5056/10, §§ 67-68, 11 October 2011; and *McCaughey and Others v. the United Kingdom*, no. 43098/09, § 142, ECHR 2013).

222. However, with a view to assisting the respondent State fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation it has found to exist (see, for example, *Abuyeva and Others v. Russia*, cited above, § 237, and *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 159, ECHR 2014). The Court's concern is to facilitate the rapid and effective correction of a defect identified in the national system of human-rights protection. Once such a defect has been identified, the national authorities have the task, subject to supervision by the Committee of Ministers, of taking – retrospectively if necessary – the necessary measures of redress in accordance with the principle of subsidiarity under the Convention, so that the Court does not have to reiterate its finding of a violation in a series of comparable cases (see *Baybaşin v. the Netherlands*, no. 13600/02, § 79, 7 June 2007).

223. In the present case the Court has found that the measures taken against the applicant, in particular his arrest and pre-trial detention were aimed at silencing and punishing him for his activities in the area of human rights as well as at preventing him from continuing his work as a human-rights defender in breach of Article 18 of the Convention. The Court notes that it has already found similar violations in the cases of *Ilgar Mammadov*, *Rasul Jafarov* (both cited above), *Mammadli v. Azerbaijan* (no. 47145/14, 19 April 2018) and *Rashad Hasanov and Others v. Azerbaijan* (nos. 48653/13 and 3 others, 7 June 2018). In the latter cases the Court concluded that the actual purpose of the arrest and pre-trial detention was either to silence and punish the applicants for criticising the Government or for their active social and political engagement (see *Ilgar Mammadov*, cited above, § 143, and *Rashad Hasanov and Others*, cited above, § 125, respectively) or to silence and punish the applicants for their activities in the area of human rights or in the area of electoral monitoring *(see Rasul Jafarov*, cited above, § 162, and *Mammadli*, cited above, § 162, respectively). The Court notes with concern that the events under examination in all five of these cases cannot be considered as isolated incidents. The reasons for the above violations found are similar and inter-connected. In fact, these judgments reflect a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law. This pattern of the use of arbitrary detention in retaliation for the exercise of the fundamental rights to freedom of expression and association has also been the subject of comment by the Council of Europe Commissioner for Human Rights (see paragraph 151 above) and other international human-rights organisations (see paragraphs 78-80 above). The Court accordingly finds that the actions of the State stemming from this pattern may give rise to further repetitive applications. Indeed, the Court cannot overlook in this regard the fact that a number of applications raising issues similar to those outlined above have either been communicated to the Azerbaijani Government or are currently pending before the Court.

224. The Court further considers it important to stress, as a matter of concern, that the domestic courts, being the ultimate guardians of the rule of law, systematically failed to protect the applicants against arbitrary arrest and continued pre-trial detention in the cases which resulted in the judgments adopted by the Court, limiting their role to one of mere automatic endorsement of the prosecution's applications to detain the applicants without any genuine judicial oversight (see paragraph 172 above; *Ilgar Mammadov*, cited above, § 118; and *Rasul Jafarov*, cited above, § 143).

225. Against this background, the Court also finds it necessary to restate that as the Convention is a constitutional instrument of European public order, the States Parties are required, in that context, to ensure a level of

scrutiny of Convention compliance which, at the very least, preserves the foundations of that public order. One of the fundamental components of European public order is the principle of the rule of law, and arbitrariness constitutes the negation of that principle (see *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 145, ECHR 2016). This is all the more so since the Statute of the Council of Europe, an organisation of which each of the States Parties to the Convention is a Member, refers in two places to the rule of law: first in the Preamble, where the signatory Governments affirm their devotion to this principle, and secondly in Article 3 which provides that "every Member of the Council of Europe must accept the principle of the rule of law ..." (see *Golder v. the United Kingdom*, 21 February 1975, § 34, Series A no. 18).

226. In view of the above, it falls to the Committee of Ministers, acting under Article 46 of the Convention, to continue to address the issue of what may be required of the respondent Government by way of compliance, through both individual and general measures (see *McCaughey and Others v. the United Kingdom*, cited above, § 145). However, the Court considers that, having regard to the specific group of individuals affected by the above-mentioned pattern in breach of Article 18, the necessary general measures to be taken by the respondent State must focus, as a matter of priority, on the protection of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention. The measures to be taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non-repetition of similar practices in the future.

227. As regards the individual measures to be taken in response to the Court's judgment, their primary aim is to achieve *restitutio in integrum*, that is, to put an end to the breach of the Convention and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see, among other authorities, *Savriddin Dzhurayev v. Russia*, no. 71386/10, § 248, ECHR 2013 (extracts)). The individual measures to be taken by the respondent State in order to discharge its obligations under Article 46 of the Convention must be determined in the light of the terms of the Court's judgment and, in particular, with due regard to its conclusions in respect of the retaliatory nature of the measures taken against the applicant with a view to punishing him for his activities in the area of human rights as well as to prevent him from continuing his work as a human-rights defender (see paragraph 215 above).

228. Given the variety of means available to achieve *restitutio in integrum* and the nature of the issues involved, the Committee of Ministers is better placed than the Court to assess the specific measures to be taken in the present case. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State

and with due regard to the applicant's evolving situation, the adoption of measures aimed, among others, at restoring his professional activities. Those measures should be feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court, and they should put the applicant, as far as possible, in the position in which he had been before his arrest (see, *mutatis mutandis*, *Kim v. Russia*, no. 44260/13, § 74, 17 July 2014).

XII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

229. 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

230. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

231. The Government submitted that the amount claimed by the applicant was unsubstantiated and excessive.

232. The Court observes that it has found violations of Articles 3, 5, 8 and 18 of the Convention. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of violations, and that compensation has thus to be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 20,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

233. The applicant claimed EUR 4,000 for legal fees (namely EUR 2,000 for Mr J. Javadov's legal services and EUR 2,000 for Ms R. Remezaite's legal services), EUR 150 for postal costs and EUR 601.25 for translation expenses incurred before the Court in relation to the proceedings in application no. 68762/14. In support of his claim, he submitted copies of the contract for legal services concluded with Mr Javadov, a breakdown of the services provided by Mr Javadov, an invoice for the hours spent by Ms Remezaite on the case, an invoice for the translation of documents related to the domestic proceedings, and receipts for postal services.

234. The applicant claimed EUR 4,200 for legal fees (specifically EUR 2,200 for Mr J. Javadov's legal services and EUR 2,000 for

Ms R. Remezaite's legal services) and 1,059.90 pounds sterling (GBP) for translation expenses in relation to the proceedings in application no. 71200/14. In support of his claim, he submitted copies of an invoice for the hours spent by Ms Remezaite on the case and invoices for translation services. In his submission concerning claims for just satisfaction the applicant also referred to the contract for legal services concluded with Mr Javadov and an invoice for the legal services provided by Mr Javadov. However, these documents were not enclosed by the applicant with his submissions.

235. The Government argued that the claims for costs and expenses had not been properly substantiated by relevant supporting documents. In particular, they noted that the applicant had failed to submit documents concerning the costs sustained in relation to the legal services provided by Mr Javadov in application no. 71200/14. They also submitted that the amounts claimed for translation costs had not been necessarily incurred and asked the Court to apply a strict approach in respect of the applicant's claims.

236. 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 rejects the claim in respect of the legal fees for the services provided by Mr Javadov for lack of proper substantiation, the claims in respect of translation fees for lack of proper itemisation, and considers it reasonable to award the remaining part of the amounts claimed in respect of legal fees incurred before the Court and postal costs. Accordingly, the Court awards the total sum of EUR 6,150 to cover for the proceedings before the Court.

C. Default interest

237. 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. *Decides* to join the applications;

2. *Declares* the complaints under Article 3 (concerning the lack of medical treatment and the conditions of the applicant's detention in the Baku pre-trial detention facility) and the complaints under Articles 5, 8, 11

and 18 of the Convention admissible, and the remainder of the application inadmissible;

3. *Holds* that there has been no violation of Article 3 of the Convention on account of the applicant's medical treatment in detention;

4. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention from 9 to 12 August 2014;

5. *Holds* that there has been no violation of Article 3 of the Convention on account of the applicant's conditions of detention as from 12 August 2014;

6. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

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

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

9. *Holds* that there has been a violation of Article 8 of the Convention;

10. *Holds* that there has been a violation of Article 18 of the Convention taken in conjunction with Articles 5 and 8 of the Convention;

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

12. *Holds*

(a) that the respondent State is to pay the applicant, 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 new Azerbaijani manats at the rate applicable at the date of settlement:

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

(ii) EUR 6,150 (six thousand one hundred and fifty euros), plus any tax that may be chargeable to the applicant, 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;

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

Done in English, and notified in writing on 20 September 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Deputy Registrar	Angelika Nußberger President