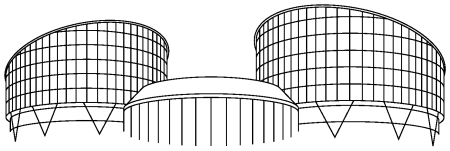

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF HUSEYNLI AND OTHERS v. AZERBAIJAN

(Applications nos. 67360/11, 67964/11 and 69379/11)

JUDGMENT

STRASBOURG

11 February 2016

FINAL

11/05/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Huseynli and Others v. Azerbaijan,

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

Angelika Nußberger, *President,*
Khanlar Hajiyev,
Erik Møse,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Carlo Ranzoni, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 19 January 2016,

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

PROCEDURE

1. The case originated in three applications (nos. 67360/11, 67964/11 and 69379/11) 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 Azerbaijani nationals, Mr Ilham Gasham oglu Huseynli (*İlham Qəşəm oğlu Hüseynli* – "the first applicant"), Mr Elchin Mugarib oglu Salimov (*Elçin Müqarib oğlu Səlimov* – "the second applicant") and Mr Ibrahim Zabit oglu Ahmadzade (*İbrahim Zabit oğlu Əhmədzadə* – "the third applicant"), on 5 October 2011, 14 October 2011 and 17 October 2011 respectively.

2. The first applicant was represented by Mr I. Aliyev, and the second and third applicants were represented by Mr R. Mustafazade and Mr A. Mustafayev, lawyers practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged, in particular, that their arrest and conviction prior to an unauthorised peaceful demonstration had been an unlawful interference with their right to freedom of assembly. They further complained that guarantees of a fair hearing had not been respected in the administrative proceedings against them, and that their arrest and conviction had been contrary to guarantees of the right to liberty.

4. On 6 May 2014 the complaints under Articles 5, 6 and 11 were communicated to the Government and the remainder of the applications was declared inadmissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The first applicant was born in 1965 and lives in Baku. The second and third applicants were born in 1984 and 1975 respectively and live in Sumgait.

A. Background information

6. At the material time the applicants were members of the main opposition parties or groups in the country: the Popular Front Party of Azerbaijan ("the PFPA"), the Musavat Party and Ictimai Palata, respectively. The first applicant was a member of the Board of the PFPA. The first and third applicants were candidates in the parliamentary elections of 2010. The first applicant was also a candidate in the parliamentary elections of 2005.

7. The year 2011 was marked by an increased number of opposition demonstrations in Azerbaijan, mainly in Baku. They were held, *inter alia*, on 11 and 12 March, 2 and 17 April, 22 May and 19 June 2011. According to the applicants, the relevant authorities were notified about the demonstrations but refused to authorise them. Despite their peaceful character, demonstrations held without authorisation were dispersed by the police.

8. All three applicants participated in a number of opposition demonstrations. In the course of many of them they were arrested and convicted. In particular, on 12 and 30 April 2010 and 12 March 2011 the second applicant was arrested and convicted of breaching the rules on the organisation and holding of assemblies and failure to obey a lawful order of a police officer. The third applicant was arrested during the demonstration of 12 March 2011 and reprimanded for breaching the rules on the organisation and holding of public assemblies.

9. According to the applicants, they had intended to attend the demonstration scheduled for 2 April 2011. In addition, the first applicant was involved in the organisation of that demonstration.

10. Prior notice of the demonstration of 2 April 2011 had been given to the relevant authority, the Baku City Executive Authority ("the BCEA"), on 18 March 2011. On 31 March 2011 the BCEA refused to allow the demonstration to be held at the place indicated by the organisers, and proposed that it be held at another place on the outskirts of Baku. Nevertheless, the organisers decided to hold the demonstration in central Baku, and information about it was disseminated via Facebook and the press.

B. The applicants' arrest, custody and administrative detention

1. The first applicant, Mr Ilham Huseynli

11. The first applicant alleged that between approximately 10 a.m. and 11 a.m. on 31 March 2011, after he had taken his child to kindergarten, police officers had stopped his car and requested that he follow them to a police station. He did not oppose the police officers' demand and was taken to police station no. 20 of the Nasimi District Police Office. At an unspecified time the applicant was informed that he was being detained in connection with the upcoming demonstration of 2 April 2011. At around 2 p.m. he learned that he would not be released from detention. The applicant was then questioned. He was asked, *inter alia*, about his intention to participate in the demonstration of 2 April 2011 and generally about the politics in the country.

12. According to the official records, the applicant was arrested for disobeying a lawful order of a police officer. In particular, police officers F.P., S.A. and R.V. stated the following in a report (*raport*) submitted to a superior police officer:

> "... at around 10.30 a.m. on 31 March 2011 on 3rd Alatava street [in Baku] we stopped a [person] who was driving by in his car and requested his identity document because he bore a resemblance to a person who was on a wanted list. But he ignored our lawful demand to produce his identity document. We brought [him] to the police station. There we found out that [he] was [the applicant] ..."

13. At around 1.20 p.m. on the day of the arrest, an "administrative-offence report" (*inzibati xəta haqqında protokol*) was issued by police officer T.A. in respect of the applicant. The report stated that the applicant had committed an administrative offence under Article 310.1 (failure to comply with a lawful order of a police officer) of the Code of Administrative Offences ("the CAO").

14. The applicant signed the part of the administrative-offence report acknowledging that he had been familiarised with the report, but left without signature the part with a pre-printed text which stated that "the rights and obligations under Articles 371, 372, 374, 377, 379 and 410.4 of the CAO of the Republic of Azerbaijan were explained". He made a statement that he had not disobeyed any order given by the police. This statement was included in the report.

15. According to the applicant, he was never provided with a copy of the administrative-offence report or with other documents in his case file. He was not given access to a lawyer after his arrest or while in police custody.

16. The applicant was brought before the Nasimi District Court on the day of his arrest.

17. According to the applicant, the hearing, which began at 3 p.m., was very brief. He refused the assistance of a State-funded lawyer and insisted

on hiring a lawyer of his own choice, but the judge disregarded his request. His representation by that lawyer was ineffective and of a formalistic nature.

18. The applicant stated before the court that he had been stopped by the police and had been requested to follow them to a police station, that he had complied with that request, and that he was not guilty of disobeying a police officer.

19. The only witnesses questioned during the court hearing were police officers T.A., F.P. and S.A. Police officer T.A. testified that he had prepared the administrative-offence report in respect of the applicant. Police officers F.P. and S.A. gave testimonies virtually identical to the above-mentioned report they had submitted to a superior police officer.

20. According to the record of the hearing, the State-funded lawyer stated that the applicant was not guilty and asked the court to terminate the administrative proceedings against him.

21. The court found that the applicant had committed an administrative offence under Article 310.1 of the CAO and sentenced him to seven days' "administrative" detention.

22. The applicant lodged an appeal before the Baku Court of Appeal, presenting his version of the facts surrounding the arrest, and arguing that he had been arrested in connection with the demonstration scheduled for 2 April 2011. He also complained that his arrest had been unlawful and that the hearing before the first-instance court had not been fair. He urged the Baku Court of Appeal to quash the first-instance court's decision.

23. It appears that the applicant was not represented by a lawyer before the Baku Court of Appeal.

24. On 5 April 2011 the Baku Court of Appeal dismissed the applicant's appeal and upheld the decision of the first-instance court, stating that its findings had been correct.

2. The second applicant, Mr Elchin Salimov

25. The second applicant alleged that at around 10.30 a.m. on 31 March 2011, when he was still in bed, three police officers had entered his apartment without an arrest warrant. The applicant's father had let the police officers in. The police officers took the applicant to police station no. 3 of the Sumgait City Police Office. At an unspecified time the applicant was questioned about his political activities.

26. According to the official records, the applicant was arrested for minor hooliganism and for disobeying a lawful order of a police officer. In particular, police officer T.R. stated the following in a report submitted to a superior police officer:

> "... at around 12.30 p.m. on 31 March 2011 on the territory of the 9th micro-district of Sumgait, I noticed a person who was making noise ... But although I invited him to respect the discipline, he continued his cursing and improper behaviour ... Therefore I

brought him to police station no. 3. There we found out that that [person] was [the applicant] ...”

27. On the day of the arrest, an administrative-offence report was issued by police officer E.S. in respect of the applicant. The report stated that the applicant had committed an administrative offence under Articles 296 (minor hooliganism) and 310.1 of the CAO.

28. The applicant refused to sign the report.

29. According to the applicant, he was never provided with a copy of the administrative-offence report or with other documents in his case file. He was not given access to a lawyer after the arrest or while he was kept in police custody.

30. According to a statement (*ərizə*) allegedly signed by the applicant and submitted to the Court by the Government, the applicant had refused legal assistance while in police custody. According to the transcript of the hearing before the Sumgait Court of Appeal, the applicant claimed that he had not signed that statement.

31. The applicant was brought before the Sumgait City Court on the day of his arrest.

32. According to the applicant, the hearing, which began at 3.30 p.m., was very brief and he was not given an opportunity to hire a lawyer of his own choice.

33. According to the transcript of the first-instance court hearing, the applicant refused the assistance of a State-funded lawyer and decided to defend himself in person.

34. The applicant stated before the court that he had been taken to a police station from his apartment, that it had been his father who had let the police officers in, that at the police station he had been questioned about his political activity, and that he was not guilty of disobeying a police officer or of swearing at the location indicated by the police. According to the transcript of the Sumgait Court of Appeal hearing, the applicant orally requested that the chief of police station no. 3, M.N., be questioned. However, there is no information whether M.N. was questioned.

35. The only witness questioned during the court hearing was police officer T.R. He testified that the applicant had been swearing without addressing any particular person and had failed to obey his order to stop his illegal behaviour.

36. The court found that the applicant had committed an administrative offence under Articles 296 and 310.1 of the CAO and sentenced him to seven days’ “administrative” detention.

37. The applicant lodged an appeal before the Sumgait Court of Appeal, presenting his version of the facts surrounding the arrest, and arguing that his arrest had been unlawful, that the hearing before the first-instance court had not been fair and that his right to respect for home had been violated by

the police. He urged the Sumgait Court of Appeal to quash the first-instance court's decision.

38. It appears that the applicant refused legal assistance at the hearing before the Sumgait Court of Appeal.

39. On 19 April 2011 the Sumgait Court of Appeal dismissed the applicant's appeal and upheld the decision of the first-instance court, stating that its findings had been correct.

3. The third applicant, Mr Ibrahim Ahmadzade

40. According to the third applicant, at around 11 a.m. on 31 March 2011 he went with his lawyer to the Sumgait City Police Office. After a conversation with the chief of police, they left. The applicant, who did not clearly explain the purpose of that visit, alleged that when he had been outside the police office and no longer accompanied by his lawyer, police officers had arrested him without explaining the reasons for doing so, and had taken him to police station no. 4 of the Sumgait City Police Office.

41. According to the official records, the applicant was arrested for "minor hooliganism". In a report submitted to a superior police officer, police officer N.M. stated the following:

> "... at around 12.30 p.m. on 31 March 2011 on Akhundov street [in Sumgait] [we, the police officers,] noticed a person who was swearing loudly without addressing anyone in particular ... We approached him and ... brought him to police station no. 4. There we found out that that [person] was [the applicant] ..."

42. Police officers R.S. and A.M. submitted explanatory reports (*izahat*) to a superior police officer. Those reports were virtually identical to the report submitted by police officer N.M.

43. On the day of the arrest police officer V.J. issued an administrative-offence report in respect of the applicant. The report stated that the applicant had committed an administrative offence under Article 296 of the CAO.

44. The applicant refused to sign the administrative-offence report.

45. According to the applicant, he was never provided with a copy of the administrative-offence report or with other documents in his case file. He was not given access to a lawyer after his arrest or while he was kept in police custody.

46. According to a decision dated 31 March 2011, police officer V.J. decided to invite a lawyer to represent the applicant, without indicating at what stage the lawyer should join the proceedings.

47. The applicant was brought before the Sumgait City Court on the day of his arrest.

48. According to the applicant, he was not given an opportunity to hire a lawyer of his own choice to represent him at the hearing, which began at 4 p.m. He asked the judge to postpone the examination of the case for one hour so that his lawyer could arrive at the court. However, the judge decided to adjourn the hearing for only thirty minutes and to recommence the

hearing at 4.30 p.m., which was not enough time for the applicant's lawyer to arrive.

49. According to the transcript of the court hearing, the applicant refused the assistance of a State-funded lawyer.

50. The applicant stated before the court that he was not guilty of breaching public order by swearing at the location indicated by the police, and that he believed that the motive for his arrest had been his participation in the demonstration of 12 March 2011.

51. The only witnesses questioned during the court hearing were police officers M.N., R.S. and A.M. They testified that the applicant had been swearing without addressing anyone in particular and that they had therefore taken him to a police station.

52. The court found that the applicant had committed an administrative offence under Article 296 of the CAO and sentenced him to seven days' "administrative" detention.

53. The applicant lodged an appeal before the Sumgait Court of Appeal, presenting his version of the facts surrounding the arrest, and arguing that his arrest had been unlawful and that the hearing before the first-instance court had not been fair. He urged the Sumgait Court of Appeal to quash the first-instance court's decision.

54. It appears that the applicant prepared his written appeal with the assistance of a lawyer of his own choice. However, he participated in the hearing before the Sumgait Court of Appeal without his lawyer.

55. On 15 April 2011 the Sumgait Court of Appeal dismissed the applicant's appeal and upheld the decision of the first-instance court, stating that its findings had been correct.

II. RELEVANT DOMESTIC LAW

A. 1995 Constitution

56. The relevant part of Article 49 of the Constitution reads as follows:

Article 49
Freedom of assembly

"... II. Everyone has the right, having notified the respective governmental bodies in advance, to assemble with other people peacefully and without arms, to organise meetings, demonstrations, protests and marches, and to stage pickets."

B. Law on Freedom of Assembly of 13 November 1998

57. Under Article 5 of the Law, advance written notification is required in order to agree on the place and time of an assembly and the route of a march, with the purpose of enabling the relevant local executive authority to

take necessary measures. The notification has to be done in writing five days before the demonstration.

58. Other provisions of the Law provide the relevant local executive authority with broad powers to issue relevant orders so as to prohibit (Article 8 §§ IV and V) or stop (Article 8 § VI) a public assembly; to restrict or change the place, route and/or time of a public assembly (Article 9 §§ II and VII); and to designate specific areas for public assemblies (Article 9 § VI).

C. Code of Administrative Offences of 2000

59. At the material time, Article 375 of the Code of Administrative Offences ("the CAO") provided as follows:

Article 375
Defender and representative

"... 375.3. A defender and a representative shall be allowed to participate in administrative-offence proceedings from the time an administrative-offence report is drawn up. If an individual is subjected to an administrative arrest for committing an administrative offence, a defender shall be allowed to participate in the administrative-offence proceedings from the moment of the administrative arrest. ..."

60. Article 376 provided, at the material time, as follows:

Article 376
Compulsory participation of a lawyer

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

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

61. Article 396 provided, at the material time, as follows:

Article 396
Measures to secure administrative-offence proceedings

"396.1. An authorised official may use the following measures in order to prevent administrative offences, to establish the identity of a person, to draw up an administrative-offence report if this cannot be done at the place [of the administrative offence] and if the drawing up of a report is important, to ensure the correct and timely examination of [administrative-offence] cases, and to ensure the implementation of decisions in administrative-offence cases: ...

396.1.2. administrative arrest; ..."

62. Article 398 provided, at the material time, as follows:

Article 398.1
Administrative arrest

"398.1. Administrative arrest, that is the short-term restriction of an individual's liberty, may be applied in exceptional circumstances when deemed necessary for ensuring the correct and timely examination of an administrative-offence case or for the implementation of a decision in an administrative-offence case, except for instances set out in legislation. ..."

63. Article 410 provided, at the material time, as follows:

Article 410
Administrative-offence report

"... 410.3. An individual who is subject to administrative-offence proceedings or a representative of a legal entity shall be given an opportunity to familiarise himself with the administrative-offence report.

410.4. ... An individual who is subject to the administrative-offence proceedings or a representative of a legal entity ... has the right to a copy of the administrative-offence report."

64. Article 414 provided, at the material time, as follows:

Article 414
Communication of an [administrative-offence] report (a prosecutor's decision) for examination

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

65. Article 422 provided, at the material time, as follows:

Article 422
Time-limits for examination of administrative-offence cases

"422.3. Cases [concerning an administrative offence] punishable by administrative detention shall be examined on the day of receipt [by the court] of an administrative-offence report; cases against persons subjected to administrative arrest shall be examined at the latest within 48 hours of their arrest."

66. Under Article 368 a public prosecutor has the right to participate in administrative proceedings. Chapter 28 of the CAO enumerates the participants of administrative proceedings and their rights and obligations. This Chapter does not mention "the prosecution" – a police officer, public prosecutor or any other public official representing the prosecution – as a participant of the proceedings.

III. RELEVANT INTERNATIONAL AND DOMESTIC DOCUMENTS AND PRESS RELEASES

A. "Observations on the human rights situation in Azerbaijan: Freedom of expression, freedom of association, freedom of peaceful assembly", by the Commissioner for Human Rights of the Council of Europe, CommDH(2011)33, 29 September 2011

67. The relevant extracts of this document read as follows:

"... Since the publication of his 2010 report, the Commissioner continued to receive reports of threats, harassment, and violence against journalists or youth activists. One of the Commissioner's recommendations to the Azerbaijani authorities was to end practices of unjustified or selective criminal prosecution of journalists or others who may express critical opinions. However, resort to such methods has apparently not abated, as illustrated by the trial against Bakhtiyar Hajiyev, a youth activist and candidate in the 2010 parliamentary elections who was using social networking sites to organise a protest. The Ganja City Court sentenced him to two years in prison on 18 May 2011 for evading military service. The timing of his arrest and the charges against him appear to be indicative of an attempt to stop his activities, which were critical of the Government. ...

A further case concerns Jabbar Savalan, a member of the youth group of the Azerbaijan Popular Front Party, who was sentenced on 4 May 2011 to two and a half years imprisonment by the Sumgait City Court on drug possession charges, after marijuana was said to be found in his possession. This happened soon after he had posted several critical comments against the authorities and called for protests via social networks. Several international governmental and non-governmental organisations have voiced their concerns about what they consider to be fabricated charges. ...

[The Commissioner] is concerned by information indicating that in the past months several national and international NGOs have faced difficulties in carrying out their activities freely, and that some of them have even been obliged to cease their activities in Azerbaijan. ...

The Commissioner is particularly concerned to hear that a building where several human rights organisations were located, including the Office of the Institute for Peace and Democracy, was demolished on 11 August 2011 in the framework of a reconstruction programme being implemented in Baku. ... The building's occupants were unable to retrieve any of their belongings, and their working materials - such as computers, documents, and books - were destroyed. The circumstances of the demolition, which occurred in the evening, give reason to believe that it was carried out in retaliation against the activities of Leyla Yunus, the director of the Institute and owner of the house, who was an outspoken critic of corruption and forced evictions in Azerbaijan. ...

[T]he Commissioner's attention was drawn to the wave of arrests of activists and political opponents in connection with protests held in Baku in March and April 2011. According to the information received, these protests were sometimes dispersed with excessive force, and the work of journalists was hindered. The organisers were denied permission to demonstrate in a central square and other places in the city centre in

Baku, and were instead authorised to hold a demonstration in the outskirts of the city. ...

The Commissioner has on various occasions criticised the method of curbing the impact of a demonstration by allowing it to take place only at another time and at a less central location, thereby diminishing significantly the visibility of the rally and its message to the general public. ..."

B. Report by Nils Muižnieks, the Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 22 to 24 May 2013, CommDH(2013)14, 6 August 2013

68. The relevant extracts of the report read as follows:

"... 43. In recent years, the authorities have arrested and prosecuted online media actors, notably bloggers or social media activists, in moves which have often been described as retaliation against their online activities. ... This appears to have been the case for many bloggers who have since been freed, such as Adnan Hajizadeh and Emin Milli, arrested in early September 2009 for hooliganism after having posted a video on YouTube which was critical of the government. ...

53. The issue of limitations imposed on freedom of assembly has regularly been raised by local and international observers in recent years. The most frequent problems encountered include the banning of demonstrations in central and easily accessible locations and the use of force to disperse the demonstrations which still go ahead, leading to arrests and, in some cases, harsh sentences. ...

64. The Commissioner notes that the authorities have ... confirmed that the legislation does not require permission for rallies. However, the authorities appear to have interpreted it as requiring such permission, and a system of authorisation has in practice replaced the system of notification. Peaceful protesters have for instance been effectively banned from demonstrating in central Baku since 2006, despite advanced notification of the assemblies. Several requests by the political opposition or civil society to hold demonstrations were allegedly denied or, when allowed, organisers were obliged to have them in areas very remote from the city centre. ..."

C. Resolution 1917 (2013) of the Parliamentary Assembly of the Council of Europe: "The honouring of obligations and commitments by Azerbaijan", 23 January 2013

69. The relevant extracts of the resolution read as follows:

"... 10. Regrettably, there is no political dialogue with the opposition parties outside parliament. The Assembly is concerned by the restrictive climate for the activities of the extra-parliamentary opposition, which complains about limitations imposed on freedom of expression and freedom of assembly and the lack of access to the public media.

11. The establishment of an inclusive political system and a truly competitive and unrestrictive political environment requires full implementation of basic freedoms, including freedom of expression, freedom of assembly and freedom of association. The situation in Azerbaijan is preoccupying and the Assembly expresses its deep concern in this regard. ...

14. The Assembly is alarmed by reports from human rights defenders and domestic and international nongovernmental organisations (NGOs) about the alleged use of fabricated charges against activists and journalists. The combination of the restrictive implementation of freedoms with unfair trials and the undue influence of the executive results in the systemic detention of people who may be considered prisoners of conscience. ..."

D. European Parliament Resolution of 12 May 2011 on Azerbaijan, P7_TA(2011)0243

70. The relevant extracts of the resolution read as follows:

"... The European Parliament, ...

D. whereas a wide-ranging clampdown on freedom of expression and assembly is being carried out in Azerbaijan following the peaceful protests against the government on 11 March and 2 April 2011; whereas the clampdown includes arrests, harassment and intimidation of civil society activists, media professionals and opposition politicians in Azerbaijan,

E. whereas the cases of the activists Jabbar Savalan and Bakhtiyar Hajiev are of particular concern; ...

1. Expresses its deep concern at the increasing number of incidents of harassment, attacks and violence against civil society and social network activists and journalists in Azerbaijan;

2. Strongly deplores the practice of intimidating, arresting, prosecuting and convicting independent journalists and political activists on various criminal charges;

3. Deplores the arrest of around 200 people prior to, and during, the anti-government protests of 2 April 2011 in Baku; calls on the Azerbaijani authorities to allow peaceful protest as well as freedom of assembly, which are central tenets of an open and democratic society; deplores the physical violence used against protesters; ...

9. Calls on the Azerbaijani authorities to maintain a dialogue with members of civil-society organisations and to take all steps to allow individuals to freely engage in peaceful, democratic activities and to allow activists to organise freely and without government interference;

10. Encourages the Azerbaijani authorities to allow peaceful demonstrations to take place in relevant locations and urges them to refrain from intimidating the organisers by detaining them and charging them with criminal and other offences; regrets that some youth activists have been expelled from Baku State University after missing examinations while in police custody linked to their political activities; ..."

E. Public Statement by Amnesty International: "Clampdown on activists intensifies in Azerbaijan ahead of 2 April protests", EUR55/003/2011, 31 March 2011

71. The relevant extracts of the public statement read as follows:

"... Ahead of a 2 April protest organized by opposition political parties through Facebook, the authorities have today detained at least 11 prominent political activists, echoing the pre-emptive methods they used to suppress protests on 11 and 12 March.

The wave of arrests began on 29 March when Nazim Abbasli from the Azerbaijan Democrat Party was arrested and given five days' administrative detention.

Today two members of the youth wing of opposition party Musavat, Elchin Salimov and Rauf Mammadov, were arrested today by police and questioned about the 2 April rally. Elchin [Salimov] was sentenced to seven days administrative detention.

Police have also questioned the family of Musavat member Idris Emiraslanli in an attempt to ascertain his whereabouts.

Deputy Chairman of the Azerbaijan Popular Front Party (APFP) Ilham Huseynli, APFP members Karim Mehdiyev, Mehdi Mehdiyev and Nemat Aliyev, Classical Popular Front Party member Yagub Babanli, and youth activists Khalid Amanli, Rovshan Nasili, and Tabriz Qasimov were all arrested today and remained in custody this evening.

Ilham Huseynli, Nemat Aliyev, Tabriz Qasimov and Mehdi Mehdiyev have already been given sentences ranging between five and seven days' administrative detention. They were convicted of "resisting police" or "disturbing the public order" despite the fact that the protests had yet to take place. Amnesty International is concerned that the trials were held behind closed doors. ...

Young activists' calls for a protest on March 11 were similarly blocked by the authorities. Several youth activists who posted the announcement of the protest on the internet were arrested on questionable charges and convicted in trials that reportedly failed to meet international standards. ...

The latest call for protests on 2 April has met with a new wave of violence and intimidation directed against activists and journalists. ..."

F. News release by Human Rights Watch: "Activists Jailed Ahead of Planned Protest. International Partners Should Condemn Crackdown", 1 April 2011

72. The relevant extracts of the news release read as follows:

"... Azerbaijani authorities have detained at least 10 opposition activists in an effort to prevent a public rally planned for April 2, 2011, in Baku, the capital, Human Rights Watch said today. The arrests are the government's latest attempt to prevent the type of protests in North Africa and the Middle East from spreading to Azerbaijan.

Police detained the activists on March 31 in Baku and various provinces. The protests planned for April 2 have been organized by Azerbaijan's opposition parties and young social network users. The activists were quickly convicted in summary trials on charges of disobeying police orders and sentenced to administrative - or misdemeanor - detention ranging from five to thirteen days, which would keep them locked up beyond the protest date. ...

Police in Sumgait, a city 40 kilometers north of Baku, rounded up at least two activists, Ibrahim Mammedzade, a political activist who ran in the November 2010 parliamentary elections, and Elchin Salimov, an opposition Musavat party youth activist. Police went to Mammedzade's home on the morning of March 31 but did not find him there. Mammedzade later went to the Sumgait Municipal Police Department on his own accord, together with his lawyer, Asabali Mustafayev.

After about an hour-long conversation with the deputy police chief, in which Mammedzade was asked about his educational background and political activities, the deputy police chief assured Mustafayev that Mammedzade would not be detained. However, later in the day, police detained him, and a court sentenced him to seven days administrative detention for allegedly disobeying a police order. The trial was closed, and the judge refused to wait for Mustafayev to arrive ...

Mustafayev ... told Human Rights Watch that Salimov had been picked up at home in the early hours of March 31 and sentenced to seven days of administrative detention for disobeying a police order. ...

The Mobile Group of Lawyers, a group uniting several lawyers and providing pro bono legal aid to the detainees, said that other activists detained in Baku on March 31 and convicted of disobeying police orders included: Rovshan Nasirli, blogger and active social network user, who was sentenced by the Yasamal District Court to nine days; Namat Aliyev, opposition Popular Front Party member, sentenced to seven days by Nizami District Court; Khalid Amanli, an opposition Musavat party youth activist, sentenced to eight days by Yasamal District Court; and Kerim Mehdiyev, the driver for the opposition Popular Front Party leader, sentenced to 13 days by the Binagadi District Court. ..."

G. Press release by Amnesty International: "Azerbaijan protests broken up as riot police move in", 2 April 2011

73. The relevant extracts of the press release read as follows:

"... According to local rights groups six more activists had been detained yesterday in connection with the protest, bringing the total number of those arrested before the protest to 17. Vugar Hasanli, Teymur Abbasli, Ibrahim Ahmadzade and Tahir Abdullayev were arrested by police late on 1 April. They were picked up by officers from their homes in and around Baku. ... Vugar Hasanli has already been sentenced to 10 days administrative detention, while Ibrahim Ahmadzade was sentenced to 7 days administrative detention. At least seven individuals have now been sentenced to administrative detention, most under Article 310.1 of Azerbaijan's Administrative Code which bans 'willful disobedience of a police official.' The majority of these trials took place behind closed doors, without the defendants having access to legal representation. "The fact that key organizers are being arrested in advance, and sentenced in closed trials of offences that have yet to take place, is indicative of the length to which the authorities are prepared to go to silence dissenting voices," John Dalhuisen said. Political activists Arzu Musayev and Kifayet Musayev said police had told them not to leave their home district of Gadabay to attend the rally in Baku, and that when they did they were followed by police officers all day. Azerbaijan state TV has reported that the 2nd April protest is an attempt by foreign powers to destabilize Azerbaijan. State controlled television stations have also broadcast several programs depicting Facebook users as mentally ill. ..."

H. Amnesty International Report: "The Spring That Never Blossomed. Freedoms Suppressed In Azerbaijan", EUR55/011/2011, 2011

74. The relevant extracts of the report read as follows:

"... In addition to those convicted in relation to their involvement in the protests, the authorities have also brought questionable criminal charges against Vidadi Isgandarov, a human rights defender, and opposition leader Shahin Hasanli. While the charges are not directly related to their participation in the protests, the timing of their arrests, as well as the dubious nature of the charges and the lack of incriminating evidence strongly suggest that they too were targeted and punished for their political activities and the peaceful exercise of their rights to freedom of expression and assembly. ...

Shahin Hasanli, managing board member of the Popular Front Party, was one of those arrested on 31 March prior to the 2 April opposition rally. ... He was convicted on 22 July and sentenced to two years' imprisonment for the possession of illegal arms. ... Shahin Hasanli, who was one of the main organizers behind the March and April protests, claims that the bullets were planted on him by the police at the time of his arrest and maintains that he has been targeted because of his political activities.

Once again, the timing of Hasanli's arrest a few days before the April protests, the nature of charges and the paucity of supporting evidence, all point strongly to the conclusion that his arrest was politically motivated. ..."

I. News release by Human Rights Watch: "Azerbaijan: Government Cracks Down to Prevent Protests. Authorities Detain Dozens and Suspend a Human Rights Group", 12 March 2011

75. The relevant extracts of the document read as follows:

"... In at least three cases, the authorities are holding the activists on administrative charges just long enough to prevent them from participating in the planned protests.

On March 8, police detained Rashadat Akhundov, a 27-year-old social media activist who was one of the first to call for the March 11 protest. Elchin Namazov, Akhundov's lawyer, told Human Rights Watch that police in civilian clothes approached him as he was running errands in Baku and demanded his documents. When Akhundov replied that he did not have them but could ask his father to get them, the policemen grabbed him, twisted his arms, stuffed him into a car and drove away. His mother witnessed the incident and tried to intervene, but was shooed away.

... That day the Khatai District Court convicted him of disobeying police orders and sentenced him to five days of administrative detention. ...

Also on March 8, police arrested Sahavat Sultanov, deputy head of the opposition party Musavat's youth wing and an active social media user. Sultanov, 29, had actively promoted the March 12 opposition rally through his Facebook contacts and other outreach. ...

Police then charged Sultanov with 'auto hooliganism' - violating traffic rules, an administrative offense. In a hearing that lasted only minutes a judge sentenced him to five days of administrative detention. ...

On March 4, police detained Dayanat Babayev, a member of the opposition Popular Front Party's (PFP) Youth Committee and an active Facebook and social network user. Babayev, 21, was very critical of the government in his postings but promoted peaceful public protests. His family and friends heard nothing until March 6, when they learned that he had been convicted, allegedly for disobeying a police order, an administrative offense, and sentenced to 10 days in detention.

The court ruling says that Babayev had disobeyed police orders and insulted policemen who approached him to warn him not to use foul language while talking on the phone in public. Asabali Mustafayev, Babayev's lawyer, who visited him in the detention center on March 7, said that Babayev was rounded up in an internet café in downtown Baku. Fifteen minutes after he arrived, three plainclothes policemen came in, twisted his arms and took him away with no explanation. ..."

J. Annual Freedom of Expression Report by the Institute for Reporters' Freedom and Safety: "Azerbaijan's Critical Voices Struggling for Survival", 2012

76. The relevant extracts of the report read as follows:

"... Freelance journalist Fuad Huseynov was arrested in October 2010 on trumped-up charges of hooliganism after exposing illegal activities of public officials in the Ujar region, in particular, involvement in drug trafficking and trafficking in persons. On 26 September 2011, Huseynov was sentenced to six and a half years in prison under Article 221.3 of the Criminal Code. One of the "victims" who testified against Huseynov later stated that he had been pressured into giving false testimony by a local mafia group. Huseynov had previously served two years of a three and a half year prison sentence on hooliganism charges, after he accused a former Ujar city police chief of drug-related crimes. At the end of the year, he remained in custody at Prison No. 12. ...

Blogger and human rights defender with "Law and Rights 2010" Taleh Khasmammadov was arrested on 12 November 2011 in the Ujar region. He was charged with hooliganism under Criminal Code Article 221.2.2 and Article 221.3, as well as resisting arrest under Article 315.1. Khasmammadov was sentenced on 20 April to four years in prison. He is thought to have been targeted for exposing the criminal activities of local officials, including by posting a series of videos to YouTube containing interviews with victims of human rights abuses. ..."

K. News release by Contact online news: "Ministry of Internal Affairs threatens participants of 2 April protest", 31 March 2011

77. The relevant extracts of the news release read as follows:

"Attempts to breach public order [and] to hold a protest on 2 April at the central streets and squares of Baku, without agreement of the Baku City Executive Authority, will be vigorously prevented. The chief of the press service department of the MIA of Azerbaijan, Orkhan Mansurzade, informed [the] Turan [news agency about this]. ...

We recall that the mayor's office refused to give permission to the Ictimai Palata to hold a demonstration on 2 April in front of Narimanov cinema and proposed to hold the protest in Bibiheybet settlement. In its turn the Ictimai Palata decided to hold the protest at 2 p.m. on 2 April at the Fountains Square. In connection with this arrests of potential activists began."

THE LAW

I. JOINDER OF THE APPLICATIONS

78. Given the similarity of the facts and complaints raised in all three applications, the Court has decided to join the applications in accordance with Rule 42 § 1 of the Rules of Court.

II. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

79. The applicants complained that their arrest and conviction had been measures used by the authorities to punish them for their political activity and to prevent them from attending the demonstration of 2 April 2011 organised in Baku by the opposition. They invoked Article 11 of the Convention, which reads as follows:

Article 11 (freedom of assembly and association)

"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."

A. Admissibility

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

B. Merits

1. The parties' submissions

81. The applicants submitted that they were known to be members of political parties. The timing of their arrest and conviction for alleged administrative offences on 31 March 2011, two days ahead of the planned demonstration of 2 April 2011, was intended to prevent them, and indeed did prevent them, from attending (in the case of the first applicant also from organising) that protest rally.

82. The applicants argued that their arrest and conviction had been unlawful and had not pursued a legitimate aim. Those measures had been aimed at silencing their political opposition, which they expressed by, *inter alia*, attending political demonstrations.

83. The Government submitted that there had been no interference with the applicants' rights under Article 11 of the Convention since they had been arrested and convicted for various administrative offences in circumstances unrelated to any public assembly. The sole reasons for the applicants' arrest and conviction were those indicated in the material of the administrative cases against them.

2. The Court's assessment

(a) Whether there was interference

84. The Court reiterates that interference with the exercise of freedom of peaceful assembly does not need to amount to an outright ban, legal or *de facto*, but can consist in various other measures taken by the authorities. The term "restrictions" in Article 11 § 2 must be interpreted as including both measures taken before or during an assembly and those, such as punitive measures, taken afterwards (see *Ezelin v. France*, 26 April 1991, § 39, Series A no. 202, and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 100, 15 October 2015). States must not only safeguard the right to assemble peacefully but must also refrain from applying unreasonable indirect restrictions upon that right (see *Djavit An v. Turkey*, no. 20652/92, § 57, ECHR 2003-III). In *Djavit An v. Turkey* the Court considered that the refusals to grant permits to the applicant in order to cross into southern Cyprus had in effect barred his participation in bi-communal meetings there, preventing him consequently from engaging in peaceful assembly with people from both communities. The Court observed that hindrance could amount to a violation of the Convention just like a legal impediment (see *Djavit An*, cited above, § 61 and, *mutatis mutandis*, *Loizidou v. Turkey* (merits), 18 December 1996, § 63, *Reports of Judgments and Decisions* 1996-VI).

85. The Court notes that in the present case it has been disputed between the parties whether there was an interference with the applicants' right to freedom of assembly. The applicants alleged that the true reason behind their arrest and conviction had been to punish them for their political activity and to prevent them from attending the demonstration of 2 April 2011. The Government claimed that the reasons for the applicants' arrest and conviction were not related to any public assembly.

86. The Court notes that in essence the parties are disputing the factual basis for the applicants' convictions. The Court has emphasised on many occasions that it is sensitive to the subsidiary nature of its role and recognises that it must be cautious in taking on the role of a first-instance

tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case (see *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000, and *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, § 135, 24 February 2005). Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and, as a general rule, it is for those courts to assess the evidence before them. The Court, however, is not bound by the findings of domestic courts, although in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts (see *Klaas v. Germany*, 22 September 1993, §§ 29-30, Series A no. 269, and *Avşar v. Turkey*, no. 25657/94, § 283, ECHR 2001-VII (extracts)). The Court has previously applied this reasoning in the context of Article 11 of the Convention (see *Hakobyan and Others v. Armenia*, no. 34320/04, §§ 92-99, 10 April 2012 and, *mutatis mutandis*, *Europapress Holding d.o.o. v. Croatia*, no. 25333/06, § 62, 22 October 2009).

87. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is to rule not on criminal guilt or civil liability, but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The Court adopts the conclusions that are, in its view, supported by the free evaluation of all the evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 147, ECHR 2005-VII).

88. The Court notes that 2011 was a year of increased political sensitivity in Azerbaijan, marked by an increased number of opposition demonstrations. The demonstrations were held, *inter alia*, on 11 and 12 March 2011, 2 and 17 April 2011, 22 May 2011, and 19 June 2011. A number of international and domestic reports alleged that during the same period, the authorities had resorted to various seemingly arbitrary measures to quell support for the opposition (see paragraphs 67-76 above). The "Observations on the human rights situation in Azerbaijan" of 29 September 2011 adopted by the Commissioner for Human Rights of the Council of Europe stated, in particular, that "[o]ne of the Commissioner's recommendations to the Azerbaijani authorities was to end practices of

unjustified or selective criminal prosecution of journalists or others who may express critical opinions". It noted that despite those recommendations, "resort to such methods has apparently not abated" (see paragraph 67 above). The European Parliament in its Resolution of 12 May 2011 on Azerbaijan stated that it deplored "the practice of intimidating, arresting, prosecuting and convicting independent journalists and political activists on various criminal charges [and] the arrest of around 200 people prior to, and during, the anti-government protests of 2 April 2011 in Baku". It called on the Azerbaijani authorities to allow peaceful protest as well as freedom of assembly (see paragraph 70 above).

89. It follows from those reports that pre-emptive and/or retaliatory arrests and convictions under the Criminal Code or the CAO were widely used by the authorities to supress support for the opposition. The legal grounds used for detention of opposition activists were quite diverse and included grounds under the Criminal Code such as possession of drugs, possession of arms, evading military service, resistance to arrest and hooliganism, as well as grounds under the CAO such as failure to obey an order of a police officer and violation of traffic rules or otherwise disturbing public order. Opposition activists were reported to have been accused of disobeying a police officer for, for example, failing to produce an identity document or using foul language on the telephone.

90. Other means, such as police warnings not to attend a protest rally, were also reportedly employed to prevent people from participating in demonstrations. Targeting organisations working on human rights and democracy, for example, by closing them down or demolishing buildings where they were located, has been reported as another measure employed to suppress those speaking up against the Government.

91. It emerges clearly from the various sources cited above that, at the material time, opposition activists were routinely deterred or prevented from participating in demonstrations; were punished for having done so; and were punished for advocating or showing support for those demonstrations. This was done by resorting to the procedure of administrative detention under various substantive provisions of the CAO (compare *Hakobyan and Others*, cited above, §§ 90-92).

92. There are a number of elements in the present cases leading the Court to conclude that the administrative proceedings against the applicants sought equally to deter them from demonstrating and to punish them for doing so.

93. Firstly, referring to the background of the cases, the Court observes that all three applicants were members of opposition political parties or groups. The first applicant held a high position in his party and had been a candidate in two parliamentary elections. The third applicant ran as a candidate in the parliamentary elections of 2010. All three of them actively

participated in various protests held by the opposition. It appears that the applicants' affiliation with the opposition was generally known.

94. Furthermore, the authorities had prior knowledge of the intended demonstration of 2 April 2011, because a week before the protest, the organisers had notified the BCEA of their intention to hold a peaceful demonstration. Reportedly, on 31 March 2011 the Ministry of Internal Affairs warned the public that attempts to hold a protest rally on 2 April in the streets and squares of central Baku without the agreement of the BCEA would be prevented (see paragraph 77 above).

95. Secondly, referring to the circumstances of the applicants' arrest and conviction, the Court observes that all three of them were arrested and convicted on the same day, 31 March 2011 – two days before the scheduled demonstration – and sentenced to seven days' administrative detention each, on dubious grounds and in similar circumstances. Thus, according to the official records, all three applicants were arrested on the street for offences related to breach of public order, and none of them resisted being taken into police custody. The first applicant was accused of disobeying an order to show an identity document. Police officers had allegedly mistaken him for a person on a wanted list and had therefore stopped his car and demanded his identity document. However, neither the name of the wanted person, nor his specific features that had led the police officers to suspect the applicant were ever indicated by the police or the domestic courts. The second and third applicants were accused of swearing aloud at no one in particular and for no apparent reason. It is remarkable that neither of those charges, which were practically identical, provided sufficient details of the acts attributed to the applicants. They were couched in standardised and vague terms and remained unclear and unexplained at the trial (compare *Hakobyan and Others*, cited above, §§ 93-95).

96. The findings of fact made by the domestic court in the applicants' cases were reached following brief trials. The facts established in such a manner were based solely on the materials provided by the police and, similarly to those materials, lacked any details and were strikingly succinct. The resulting court decisions appear to have been a mere and unquestioned recapitulation of the circumstances and the charges as presented in the relevant police reports and do not appear to have been reached as a result of an objective and thorough judicial examination (compare *Hakobyan and Others*, cited above, § 98).

97. In view of all the above, the Court considers that there are cogent elements in the present cases prompting it to doubt the credibility of the administrative proceedings against the applicants. The material before the Court allows it to draw strong, clear and concordant inferences to the effect that the administrative proceedings against the applicants and their ensuing detention were measures aimed at preventing them from participating in the demonstration of 2 April 2011 and punishing them for having participated

in opposition protests in general. The Court considers that those measures amounted to an interference with the applicants' right to freedom of peaceful assembly.

(b) Whether the interference was justified

98. The Court notes that the interference in the present cases amounted to the applicants' being arrested and sentenced to "administrative" detention in order to prevent their participation in the demonstration of 2 April 2011 and to punish them for having participated in opposition protests. The legal basis for those measures was Articles 296 and 310.1 of the CAO, which prescribes an administrative penalty for "minor hooliganism" and for "failure to comply with a lawful order of a police officer" respectively. Thus, the measures in question were imposed relying on legal provisions which had no connection with the intended purpose of those measures. The Court cannot but agree with the applicants that the interference with their freedom of peaceful assembly on such a legal basis could only be characterised as arbitrary and unlawful (compare *Hakobyan and Others*, cited above, § 107).

99. Those measures had a chilling effect on the individuals concerned and had a serious potential also to deter other opposition supporters and the public at large from attending demonstrations and, more generally, from participating in open political debate.

100. Consequently, the interference did not meet the requirement of lawfulness. That being so, the Court is not required to determine whether the interference pursued a legitimate aim and was necessary in a democratic society.

101. There has accordingly been a violation of Article 11 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

102. The applicants complained under Article 6 of the Convention that they had not had a fair hearing in the proceedings concerning their alleged administrative offences. The relevant parts of Article 6 of the Convention read as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; ..."

A. Admissibility

103. Although the applicability of Article 6 to the administrative proceedings in question is not in dispute, the Court considers it necessary to address this issue of its own motion. It notes that each applicant was convicted to seven days' administrative detention, the purpose of the sanction being purely punitive. Therefore, referring to its findings in its well-established case-law, the Court considers that the proceedings in the present cases should be classified as determining criminal charges against the applicants, even though they are characterised as "administrative" under Azerbaijani legislation (see *Ziliberberg v. Moldova*, no. 61821/00, §§ 30-35, 1 February 2005; *Menesheva v. Russia*, no. 59261/00, §§ 95-98, ECHR 2006-III; and *Galstyan v. Armenia*, no. 26986/03, §§ 56-60, 15 November 2007; see also *Asadbeyli and Others v. Azerbaijan*, nos. 3653/05, 14729/05, 20908/05, 26242/05, 36083/05 and 16519/06, §§ 152-55, 11 December 2012).

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

B. Merits

1. The parties' submissions

105. The applicants submitted, in particular, that they had not been provided, either prior to the hearing before the respective first-instance courts or subsequently, with a copy of the relevant administrative-offence reports or with other material in their respective case files, and that the respective hearing before the first-instance courts had been very brief. They also argued that the courts had based their findings merely on the administrative-offence reports and on the statements of police officers who had been the sole witnesses questioned at the respective first-instance hearings. The applicants further submitted that they had not been represented by a lawyer at the pre-trial stage. Before the respective first-instance courts, the first applicant had been only formalistically represented by a State-funded lawyer, whereas the second and third applicants had not been represented by any lawyer.

106. The Government submitted that the administrative proceedings with respect to the applicants had been in line with the national legislation. They emphasised in particular that in the domestic proceedings

the first applicant had complained that he had not been provided with copies of material in his case file but had not specifically mentioned the administrative-offence report. Nor had he argued at the trial that he needed additional time to prepare his defence. The second applicant had failed to complain that he had not been provided with the material in his case file.

107. Furthermore, the Government submitted that the first applicant had not requested the appearance of any witnesses on his behalf, either before the first-instance court or the Court of Appeal. The second applicant had requested the summoning of a witness and that request had been granted by the Court of Appeal.

108. As to the first applicant's complaint about lack of legal assistance, the Government referred to the first sentence of Article 375.3 of the CAO and argued that the applicant had not had the right to a lawyer at the initial stage of the investigation. The Government also submitted that during the hearings before the respective first-instance courts, the first applicant had not objected to being represented by a State-funded lawyer, whereas the second and third applicants had refused the legal assistance proposed to them.

109. In response to the Government's submission that he had not asked the domestic courts to summon any witnesses on his behalf, the first applicant emphasised that he had been alone when arrested.

2. The Court's assessment

110. The Court reiterates that Article 6 of the Convention guarantees the right to a fair hearing, and the Court's task is to ascertain whether the proceedings as a whole, including the way in which evidence was obtained and heard, were fair, in particular, whether the applicant was given the opportunity of challenging the evidence and of opposing its use; and whether the principles of adversarial proceedings and equality of arms between the prosecution and the defence were respected (see *Bykov v. Russia* [GC], no. 4378/02, §§ 88 and 90, 10 March 2009, and *Rowe and Davis v. the United Kingdom* [GC], no. 28901/95, § 60, ECHR 2000-II).

111. The requirements of Article 6 § 3 are to be seen as particular aspects of the right to a fair trial guaranteed by Article 6 § 1 (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 94, 2 November 2010). The Court will therefore examine the complaints under both provisions taken together (see, among many other authorities, *F.C.B. v. Italy*, 28 August 1991, § 29, Series A no. 208-B, and *Poitrimol v. France*, 23 November 1993, § 29, Series A no. 277-A). In so doing, it will examine in turn each of the various grounds giving rise to the present complaints in order to determine whether the proceedings, considered as a whole, were fair (see, for a similar approach, *Asadbeyli and Others*, cited above, § 130).

(a) Right to adequate time and facilities to prepare one's defence

112. Article 6 § 3 (b) guarantees the accused "adequate time and facilities for the preparation of his defence". The accused must have the opportunity to organise his defence in an appropriate way and without restriction of the possibility to put all relevant defence arguments before the trial court and thus to influence the outcome of the proceedings. Furthermore, the facilities which everyone charged with a criminal offence should enjoy include the opportunity to acquaint himself, for the purposes of preparing his defence, with the results of investigations carried out throughout the proceedings (see *Moiseyev v. Russia*, no. 62936/00, § 220, 9 October 2008). The issue of whether the time and facilities afforded to an accused were adequate must be assessed in the light of the circumstances of each particular case (see *Malofeyeva v. Russia*, no. 36673/04, § 112, 30 May 2013).

113. The present cases were dealt with in an expedited procedure under the CAO: in cases concerning an administrative charge for an offence punishable by administrative detention, the police were to transmit the administrative-offence file to a court immediately after having compiled it, and the court was to examine the case on the same day, or, in the case of persons being held in police custody, no later than forty-eight hours after the arrest (see paragraphs 64 and 65 above). The Court reiterates that recourse to that procedure when a "criminal charge" must be determined is not in itself contrary to Article 6 of the Convention as long as the procedure provides the necessary safeguards and guarantees (see *Borisova v. Bulgaria*, no. 56891/00, § 40, 21 December 2006).

114. Turning to the question of procedural safeguards and guarantees, the Court notes that the pre-trial procedure in the applicants' cases was very brief. The applicants were arrested between 10.30 a.m. and 12.30 p.m. on 31 March 2011; they were then questioned and administrative-offence reports were drawn up in respect of them. All three applicants were kept in police custody for a few hours and brought on the same day before first-instance courts for trial hearings, which began at between 3 p.m. and 4 p.m. While being held at the police station, the applicants were secluded from the outside world. Their situation was aggravated by the fact that they were not represented by a lawyer during the pre-trial procedure.

115. The Court further notes that by virtue of Article 410.4 of the CAO the applicants were entitled to receive a copy of the administrative-offence reports drawn up in respect of them. However, the authorities did not make a copy of the reports available to the applicants. Furthermore, the respective appellate courts failed to respond to the first applicant's complaint that he had not been provided with the material in his case file generally, and to the second and third applicants' specific requests for copies of the administrative-offence reports and of certain other material in their case files.

116. Even assuming that the applicants' cases were not complex, the Court doubts that the circumstances in which the respective trials were conducted were such as to enable them to familiarise themselves properly with, and to assess adequately, the charges and evidence against them and to develop a viable legal strategy for their defence (compare *Vyerentsov v. Ukraine*, no. 20372/11, § 76, 11 April 2013).

117. Furthermore, the CAO did not require the mandatory participation of a public prosecutor or another public officer representing the prosecution, to present the case against the defendant before a judge (see paragraph 66 above). It appears that the accusation against the applicants was both presented and examined by the judges of the respective first-instance courts. The Court is not satisfied that such a state of affairs afforded the applicants an opportunity to put forward an adequate defence in adversarial proceedings.

118. In these circumstances the Court concludes that the applicants were not afforded adequate time and facilities to prepare their defence.

(b) Right to a reasoned decision

119. The Court's duty, under Article 19 of the Convention, is to ensure observance of the commitments undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or of law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *Schenk v. Switzerland*, 12 July 1988, §§ 45-46, Series A no. 140, and *Teixeira de Castro v. Portugal*, 9 June 1998, § 34, *Reports* 1998-IV). In that context, regard must also be had to whether the applicant was given the opportunity of challenging the authenticity of the evidence and of opposing its use. The quality of the evidence is also taken into account, including whether the circumstances in which it was obtained cast doubt on its reliability or accuracy (see *Jalloh v. Germany* [GC], no. 54810/00, § 96, ECHR 2006-IX).

120. According to the Court's established case-law reflecting a principle related to the proper administration of justice, judgments of courts and tribunals should adequately state the reasons on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I, with further references).

121. In the present cases, the respective first-instance courts examined the applicants' cases in oral hearings in which the applicants were given an opportunity to make submissions. However, the courts relied heavily on the administrative-offence reports prepared by the police and on the statements of police officers, who were the sole witnesses questioned at the respective hearings. The Court notes that those witnesses were the very police officers

who had arrested the applicants. Moreover the administrative-offence reports in respect of the applicants were based on those police officers' reports to a superior police officer. In the case of the first and second applicants, those police officers were also ones who had claimed that, in breach of Article 310.1 of the CAO, their orders had been disobeyed. The domestic courts failed to provide adequate reasons why they considered the witness statements of the police officers more objective and reliable than the statements of the applicants. It is also regrettable that the domestic courts did not attempt to find out whether there had been witnesses who were not connected with the police and, if so, to hear them.

122. The Court takes note of the Government's submission that the second applicant requested that a witness be heard, and that that request was granted by the Court of Appeal. The Court observes that, according to the transcript of the Sumgait Court of Appeal hearing, the second applicant indeed orally requested that the chief of police station no. 3, M.N., be questioned. However, although the Court of Appeal formally granted the request, there is nothing in the material before the Court to suggest that M.N. was actually heard, and the decision of the Court of Appeal gave no explanation in that regard.

123. Lastly, the Court notes that the applicants alleged before the respective domestic courts that their arrest had been unlawful and contested the police officers' versions of the facts surrounding their arrest. However, there is nothing in the case files to suggest that the domestic courts took note of the applicants' arguments that they had been arrested for their activities as members of the opposition. The courts merely accepted the police's versions of the facts and the charges as presented in the relevant police reports, and ignored the applicants' specific, relevant and important arguments. In this regard, the Court notes that whereas there were no witnesses who could have appeared on the first applicant's behalf, in their oral and written submissions before the domestic courts the second and third applicants had indicated persons who would have confirmed their versions of the facts, namely, the second applicant's father and the third applicant's lawyer. Considering the nature and seriousness of all three applicants' allegations, the criminal nature of the proceedings against them and the lack of effective legal assistance, in the Court's view the domestic courts should have taken steps to obtain the testimonies of those persons or attempted in some other way to clarify the disputed facts.

124. Having regard to the above considerations, the Court concludes that the domestic courts' decisions lacked adequate reasoning.

(c) Right to legal assistance

125. The Court reiterates that, although not absolute, the right of anyone charged with a criminal offence to be effectively defended by a lawyer,

assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach v. France*, no. 29731/96, § 89, ECHR 2001-II).

126. The Court emphasises that Article 6 will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police questioning (see *John Murray v. the United Kingdom*, 8 February 1996, § 63, *Reports* 1996-I). Even where compelling reasons may exceptionally justify denial of access to a lawyer, such restriction – whatever its justification – must not unduly prejudice the rights of the accused under Article 6 (see *Salduz v. Turkey* [GC], no. 36391/02, § 55, ECHR 2008, and *Dvorski v. Croatia* [GC], no. 25703/11, §§ 77-80, 20 October 2015).

127. The Court also notes that the right of an accused to participate effectively in a criminal trial includes, in general, not only the right to be present, but also the right to receive legal assistance, if necessary (see *Lagerblom v. Sweden*, no. 26891/95, § 49, 14 January 2003). The waiver of a right guaranteed by the Convention – insofar as it is permissible – must be established in an unequivocal manner and must be attended by minimum safeguards commensurate with its importance (see *Colozza v. Italy*, 12 February 1985, § 28, Series A no. 89).

128. In the present cases, the applicants were guaranteed the right to legal representation under the CAO. However, they were not represented by a lawyer at the pre-trial stage of the proceedings. In this connection, the Court cannot accept the Government's argument that under domestic law, the right to legal assistance at the pre-trial stage arises only after an administrative-offence report has been drawn up. In accordance with Articles 375 and 376 of the CAO, the right to legal representation is guaranteed as soon as an administrative arrest has been made.

129. From the material before the Court, it does not appear that the applicants expressly waived their right to a lawyer at the pre-trial stage. The Government submitted to the Court a copy of a document about refusal of legal assistance allegedly signed by the second applicant. However, from the transcript of the hearing before the Sumgait Court of Appeal it is clear that the applicant denied having signed that document. Nevertheless, the Court of Appeal did not take steps to verify his claim. The Government also submitted to the Court a copy of a document signed by police officer V.J., according to which he had decided to invite a lawyer to represent the third applicant. However, there is nothing in the material before the Court to suggest that any legal assistance was actually provided.

130. According to the applicants, after their arrest they were questioned at the respective police stations. However, there is no evidence that any of the statements made by the applicants during questioning were used at trial. The Court cannot speculate on the exact impact which the applicants' access to a lawyer during the pre-trial stage of the proceedings would have had on the ensuing proceedings and whether the absence of a lawyer during that

period irretrievably affected their defence rights (compare *Huseyn and Others v. Azerbaijan*, nos. 35485/05, 45553/05, 35680/05 and 36085/05, § 172, 26 July 2011). Nevertheless, the Court reiterates that the very fact of restricting a detained suspect's access to a lawyer may prejudice the rights of the defence, even where an accused person remained silent, or was not questioned, or no incriminating statements were obtained (see, for example, *Dayanan v. Turkey*, no. 7377/03, §§ 32-33, 13 October 2009).

131. Turning to the first applicant's argument that he was not allowed to hire a lawyer of his own choice and about the formalistic nature of the State-funded lawyer's representation before the first-instance court, the Court notes, firstly, that, under Article 376.2 of the CAO a judge must provide a person against whom an administrative case is being examined with a lawyer only if the attendance of a lawyer of his or her own choice is impossible. There is nothing in the material before the Court to suggest that the judge gave the applicant an opportunity to appoint a lawyer of his own choice, as required under Article 376.2 of the CAO.

132. In addition, the Court emphasises that under Article 6 § 3 (c) of the Convention, an accused is entitled to legal assistance which is practical and effective and not theoretical or illusory. This Convention provision speaks of "assistance" and not of "nomination": mere nomination does not ensure effective assistance, since a lawyer may be prevented from providing such assistance for various practical reasons, or shirk his or her duties. A State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal-aid purposes. However, if a failure by legal-aid counsel to provide effective representation is manifest or is sufficiently brought to the authorities' attention in some other way, the authorities must take steps to ensure that the accused effectively enjoys the right to legal assistance (see *Artico v. Italy*, 13 May 1980, §§ 33-37, Series A no. 37, and *Kamasinski v. Austria*, 19 December 1989, § 65, Series A no. 168). Moreover, where it is clear that the lawyer representing the accused before the domestic court has not had the time and facilities to organise a proper defence, the court should take positive measures to ensure that the lawyer is given an opportunity to fulfil his obligations in the best possible conditions (see, *mutatis mutandis*, *Goddi v. Italy*, 9 April 1984, § 31, Series A no. 76). The Court notes that in the case of the first applicant, a State-funded lawyer joined the proceedings at the trial stage. There is nothing in the material before the Court to suggest, however, that before the opening of the first-instance court hearing he was afforded the time and facilities to organise a proper defence. The Court also observes that during the hearing the State-funded lawyer did not submit any written objections, complaints or motions on the applicant's behalf. In his oral submissions the lawyer simply stated that the applicant was not guilty and asked the court to terminate the administrative proceedings against him. These circumstances give reason to believe that the representation by the State-funded lawyer was of a formalistic

nature. Furthermore, the Court of Appeal failed to reply to the applicant's complaints of lack of effective legal assistance both at the pre-trial proceedings and at the first-instance court hearing.

133. Turning to the second and third applicants' arguments that their right to legal assistance of their own choosing was breached and that they were not represented by a lawyer, the Court notes, firstly, that there is nothing in the material before the Court to suggest that before being offered State-funded legal assistance, the applicants were given an opportunity to appoint a lawyer of their own choice, as required under Article 376.2 of the CAO (see *Dvorski*, cited above, §§ 77-80). Secondly, even though the applicants refused State-funded legal assistance, it must be ascertained that their refusal amounted to an unequivocal waiver of the right to a lawyer. However, having already established that the second and third applicants were not afforded legal assistance at the pre-trial stage, the Court finds it unnecessary to rule on the issue whether their refusal of State-funded legal assistance at the trial constituted an unequivocal waiver of the right to a lawyer.

134. The Court concludes that the applicants' right to legal assistance was not respected.

(d) Conclusion

135. In view of the above conclusions, the Court finds that the proceedings against all three applicants, considered as a whole, were not in conformity with the guarantees of a fair hearing under Article 6 §§ 1 and 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

136. The applicants complained that their arrest and administrative detention prior to the demonstration in which they had intended to participate had breached Article 5 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court; ...
>
> (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; ...
>
> 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
>
> 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

137. The Court considers, in the light of the parties' submissions, that these complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. It therefore concludes that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

138. The applicants argued that their arrest and administrative detention had been unlawful since the alleged offences giving rise to the deprivation of their liberty had been fabricated. The institution of administrative proceedings on various pretexts against opposition activists was an arbitrary practice aimed at preventing or discouraging them from participating in political rallies being held in the country at the material time, or punishing them for having done so. The applicants alleged that they were victims of such practice.

139. The applicants further complained that they had not been promptly informed about the reasons for their arrest, and that the arrest had not conformed to domestic procedural rules, in particular because their rights, including the right to a lawyer, had not been properly explained to them; and they had not been provided with a copy of the administrative-offence reports drawn up in respect of them. The third applicant also complained that he had not been given an opportunity to contact his relatives.

140. The Government submitted that the applicants' arrest had been in conformity with the CAO. Their administrative detention had resulted from lawful court decisions by which they had been found guilty of certain administrative offences.

141. The Government also submitted that the applicants had been duly informed about the reasons for their arrest as well as their rights, even if the first applicant had failed to sign the part of the administrative-offence report which stated that his rights had been explained to him, and the second and third applicants had refused to sign the administrative-offence reports altogether. The Government further argued that all three applicants had not duly complained about the failure to serve on them the relevant

administrative-offence reports. Also, the third applicant had failed to duly complain about not being given an opportunity to contact his relatives.

2. The Court's assessment

142. The Court reiterates that Article 5 of the Convention guarantees the fundamental right to liberty and security. That right is of primary importance in a "democratic society" within the meaning of the Convention (see *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 65, Series A no. 12, and *Winterwerp v. the Netherlands*, 24 October 1979, § 37, Series A no. 33).

143. Any deprivation of liberty must, in addition to falling within one of the exceptions set out in sub-paragraphs (a) to (f), be "lawful". Where the "lawfulness" of detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, 29 January 2008). Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be in keeping with the purpose of protecting the individual from arbitrariness (see *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Kafkaris v. Cyprus* [GC], no. 21906/04, § 116, ECHR 2008).

144. It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi*, cited above, § 67). While the Court has not previously formulated a global definition as to what types of conduct on the part of the authorities might constitute "arbitrariness" for the purposes of Article 5 § 1, key principles have been developed on a case-by-case basis (see *Mooren v. Germany* [GC], no. 11364/03, § 77, 9 July 2009).

145. Furthermore, detention will be considered "arbitrary" where, despite complying with the letter of national law, there has been an element of bad faith or deception on the part of the authorities (see, for example, *Bozano*, cited above, § 59, and *Saadi*, cited above, § 69) or where the domestic authorities neglected to attempt to apply the relevant legislation correctly (see *Benham v. the United Kingdom*, 10 June 1996, § 47, *Reports* 1996-III, and *Liu v. Russia*, no. 42086/05, § 82, 6 December 2007).

146. Turning to the present case, the Court observes that the applicants were arrested two days prior to the demonstration of 2 April 2011. They were taken to various police stations where they were kept in police custody for a few hours, and brought before respective first-instance courts on the

same date. Each applicant was sentenced to seven days' administrative detention.

147. The Court reiterates its finding that the applicants fell victim to arbitrary measures (namely, arrest and custody followed by seven days' imprisonment each). The applicants' arrest pursued aims unrelated to the formal grounds relied on to justify the deprivation of their liberty, and involved an element of bad faith on the part of the police officers concerned. While the applicants were formally charged with failure to comply with a lawful order of a police officer or with minor hooliganism, they were in fact detained in order to prevent their participation in the demonstration of 2 April 2011 and to punish them for having participated in opposition protests (see paragraphs 97 and 98 above). Furthermore, there are sufficient elements to conclude that the domestic courts that imposed the administrative detention also acted arbitrarily in reviewing both the factual and the legal grounds for the applicants' detention (see paragraphs 96, 121 and 123 above). In such circumstances, the Court cannot but conclude that the applicants' deprivation of liberty as a whole was arbitrary and therefore contrary to the requirements of Article 5 § 1 of the Convention (compare *Hakobyan and Others*, cited above, § 123).

148. Accordingly, there has been a violation of Article 5 § 1 of the Convention.

149. In view of the nature and scope of its finding, the Court does not consider it necessary to examine the applicants' other complaints under Article 5 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

150. 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

151. In respect of non-pecuniary damage the first applicant claimed 20,000 euros (EUR), and the second and third applicants claimed EUR 19,000 each.

152. The Government submitted that the applicants' claims were unsubstantiated and unreasonable. They considered that, in any event, an award of EUR 4,000 for each applicant would constitute sufficient just satisfaction.

153. The Court considers that the applicants have suffered non-pecuniary damage which cannot be compensated for solely by the finding of

a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 12,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

154. The applicants also claimed EUR 3,000 each for the legal fees incurred before the domestic courts and before the Court. In support of their claims, they submitted contracts, dated 25 September 2011, 1 May 2011 and 4 April 2011 respectively, for legal and translation services.

155. The Government considered that the claims were excessive and could not be regarded as reasonable as to quantum. In particular, they argued that the first applicant had failed to submit itemised particulars of his claim; that there was nothing in the case files to suggest that the second and third applicants' representative had rendered them any legal assistance before the domestic courts; and that before the Court the second and third applicants had been represented by the same lawyers and substantial parts of the submissions in both cases were identical or very similar.

156. The Government asked the Court to dismiss the first applicant's claim for legal fees. They considered that, in any event, an award of EUR 1,000 for each applicant would constitute sufficient just satisfaction for any costs and expenses.

157. 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. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award to the first applicant the sum of EUR 2,500 covering costs under all heads. The Court further notes that in the Strasbourg proceedings the second and third applicants were represented by the same lawyers, Mr R. Mustafazade and Mr A. Mustafayev, and that those lawyers' submissions in both cases were very similar. The Court therefore awards the total amount of EUR 3,500 to the second and third applicants jointly in respect of the legal services rendered by Mr R. Mustafazade and Mr A. Mustafayev.

C. Default interest

158. 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 applications admissible;

3. *Holds* that there has been a violation of Article 11 of the Convention on account of the applicants' arrest and conviction;

4. *Holds* that there has been a violation of Article 6 §§ 1 and 3 of the Convention in respect of all three applicants;

5. *Holds* that there has been a violation of Article 5 of the Convention in respect of all three applicants;

6. *Holds*

(a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, to each applicant, in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, to the first applicant, in respect of costs and expenses;

(iii) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, jointly to the second and third applicants, in respect of costs and expenses, to be paid directly into their representatives' bank account;

(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;

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

Done in English, and notified in writing on 11 February 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President