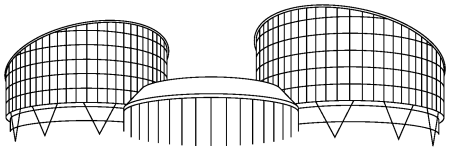

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF ABBAS AND OTHERS v. AZERBAIJAN

(Applications nos. 69397/11 and 3 others – see appended list)

JUDGMENT

STRASBOURG

13 July 2017

This judgment is final but it may be subject to editorial revision.

In the case of Abbas and Others v. Azerbaijan,

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

André Potocki, *President,*
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 20 June 2017,

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

PROCEDURE

1. The case originated in four applications (nos. 69397/11, 70966/11, 73706/11 and 935/12) 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 four Azerbaijani nationals, Mr Fakhraddin Hamid oglu Abbas ("the first applicant"), Mr Kochar Adil oglu Nagiyev ("the second applicant"), Mr Sahib Jabrayil oglu Rustamli ("the third applicant") and Mr Niman Asgar oglu Asgarov ("the fourth applicant"), on 17 October 2011, 2 November 2011, 29 October 2011 and 6 December 2011 respectively.

2. The second applicant, who had been granted legal aid, the first and third applicants were represented by Mr R. Mustafazade and Mr A. Mustafayev, lawyers practising in Azerbaijan. The fourth applicant was represented by Mr K. Bagirov, a lawyer practicing in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. On 6 May 2014 (application no. 935/12), 3 February 2015 (application no. 70966/11) and 16 February 2015 (applications nos. 69397/11 and 73706/11) the complaints concerning Articles 5, 6, 10 and 11 of the Convention, raised in all four applications, Article 3 of the Convention, raised only in applications nos. 69397/11 and 73706/11, and Article 7 of the Convention, raised only in application no. 70966/11, were communicated to the Government. On the same dates the remainder of all four applications were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants' dates of birth and places of residence are given in the Appendix.

A. Background information

5. At the material time the first applicant was a chairman of the Sumgait city branch of an opposition party *Musavat* and the fourth applicant was a deputy chairman of the Goychay district branch of that party. The third applicant was a member of another opposition party, the Popular Front Party of Azerbaijan. The second applicant was a member of the Coordination Council of an opposition group *İctimai Palata*.

According to the applicants, they participated in a number of peaceful demonstrations organised by the opposition.

6. The number of opposition demonstrations increased in 2011. That tendency continued into the following years. Demonstrations were held, *inter alia*, on 2 April and 17 April 2011 and 20 October 2012.

7. The second applicant attended the demonstration of 2 April 2011. The first and third applicants attended the demonstration of 17 April 2011. According to the first applicant, he also intended to participate in the demonstration of 20 October 2012.

8. Prior to those demonstrations, on 18 March 2011, 11 April 2011 and 15 October 2012 respectively the organisers had given notice to the relevant authority, the Baku City Executive Authority ("the BCEA").

9. The BCEA refused to authorise those demonstrations at the places indicated by the organisers and proposed a different location on the outskirts of Baku – the grounds of a driving school situated in the 20th residential area of the Sabail District.

10. The organisers nevertheless decided to hold the demonstrations as planned. According to the applicants, the demonstrations were intended to be peaceful and were conducted in a peaceful manner. The participants were demanding democratic reforms in the country and free and fair elections, and protesting against impediments on freedom of assembly.

11. The fourth applicant was one of the organisers of a rally planned by several opposition parties. The rally was to be held on 18 October 2011 in Goychay. The fourth applicant also intended to participate in that assembly.

12. According to the fourth applicant, prior to the rally of 18 October 2011, on 9 October 2011, he and the other organisers gave notice to the relevant authority, the Goychay District Executive Authority ("the GDEA"). The information about the rally was sent to the GDEA by post and the

fourth applicant's home address was indicated (for reference) as the address of the sender.

13. According to the fourth applicant, the rally was intended to be peaceful. Its purpose was to mark the twentieth anniversary of the Independence Day and to honour the memory of those buried in the Cemetery of Martyrs in the town of Goychay.

14. It appears that eventually the rally did not take place.

B. The applicants' arrests and subsequent administrative proceedings against them

15. As mentioned above, the demonstration of 2 April 2011 was attended by the second applicant; the demonstration of 17 April 2011 was attended by the first and third applicants. However, the police began to disperse those demonstrations as soon as the protesters began to gather.

16. The circumstances related to the dispersal of the demonstrations of 2 April and 17 April 2011, the first, second and third applicants' arrests and custody, and subsequent administrative proceedings against them are similar to those in *Gafgaz Mammadov v. Azerbaijan* (no. 60259/11, 15 October 2015) (see also Appendix).

17. The circumstances of the fourth and first applicants' arrests on 15 October 2011 and 20 October 2012 respectively, their custody and subsequent administrative proceedings against them are similar to those in *Huseynli and Others v. Azerbaijan* (nos. 67360/11 and 2 others, 11 February 2016) (see also Appendix).

C. The first and third applicants' allegations of ill-treatment

18. According to the first and third applicants, after being arrested during the dispersal of the demonstration of 17 April 2011 and brought to a police station, they were subjected to ill-treatment by the deputy chief of the Nasimi District Police Office, police officer S.N.

19. In a photograph, submitted to the Court by the first applicant and allegedly taken after his police custody, he is shown with a bruise on his forehead. In the other photograph, allegedly taken before his police custody, the first applicant is shown without any bruising on his forehead.

20. The third applicant submitted to the Court a medical report of 18 April 2011 confirming that he had a broken rib. According to the third applicant, that medical report was issued when he was taken to a hospital after his trial, before he was placed in a detention facility to serve his sentence. He also submitted a photograph in which he is shown with bruises on his body.

21. The applicants raised their ill-treatment complaints during the administrative proceedings following their arrest on 17 April 2011. Namely,

in their appeals against the first-instance court's decisions the applicants complained that they had been ill-treated during their police custody, and requested the Baku Court of Appeal to order a forensic examination of their injuries, to question particular witnesses and to obtain the review of the medical records drawn up at their check-in to a detention facility where they had served their sentence.

22. On 21 April and 4 May 2011 respectively the Baku Court of Appeal dismissed the applicants' appeals and upheld the decisions of the first-instance court (see Appendix).

The appellate court disregarded the applicants' ill-treatment complaints and their requests related to those complaints.

23. On an unspecified date the applicants lodged a complaint before the General Prosecutor's Office asking it to conduct an investigation into the alleged ill-treatment.

24. On unspecified dates, the applicants were summoned to the Nasimi District prosecutor's office and questioned in connection with their complaint of ill-treatment.

25. On 23 May and 2 July 2011 investigator M.H. adopted decisions refusing to open criminal proceedings into allegations of ill-treatment in respect of the third and first applicants respectively.

26. According to the applicants, for a certain period of time neither they nor their lawyer were informed about any actions taken by the authorities to investigate their ill-treatment complaints. Only in January 2012, after making enquiries about the outcome of the investigation, did they manage to obtain copies of the investigator's above-mentioned decisions.

27. The applicants did not lodge a complaint with a supervising court against those decisions.

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL DOCUMENTS

28. After the amendments introduced by Law no. 135-IVQD of 31 May 2011, which entered into force on 1 July 2011, Article 410 of the Code of Administrative Offences 2000 ("the CAO") provided as follows:

Article 410
Administrative offence report

> "... 410.3. A copy of the administrative offence report shall be given to an individual who is subject to the administrative offence proceedings or to a representative of a legal entity.
>
> 410.4. ... An aggrieved person in administrative offence proceedings has the right to a copy of the administrative offence report."

29. For a summary of the other relevant provisions concerning administrative proceedings, the relevant provisions concerning freedom of

assembly, the organisation and holding of public assemblies, and the relevant extracts from international documents and press releases, see the judgment in the case of *Huseynli and Others* (cited above, §§ 56-77) and the judgment in the case of *Ibrahimov and Others v. Azerbaijan* (nos. 69234/11 and 2 others, §§ 44-59, 11 February 2016).

THE LAW

I. JOINDER OF THE APPLICATIONS

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

II. ALLEGED VIOLATION OF ARTICLES 10 AND 11 OF THE CONVENTION

31. The first, second and third applicants complained that the dispersal of the demonstrations of 2 April and 17 April 2011 by the police and their arrests and convictions for administrative offences had been in breach of their right to freedom of assembly, as provided for in Article 11 of the Convention, and their right to freedom of expression, as provided for in Article 10 of the Convention, which read as follows:

Article 11

"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."

Article 10

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

32. The first and fourth applicants complained that their arrests and convictions prior to the assemblies of 18 October 2011 and 20 October 2012 had been measures used by the authorities to punish them for their political activity and to prevent them from participating in opposition protests. They invoked Articles 10 and 11 of the Convention.

A. Admissibility

33. 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. Scope of the complaints

34. In the circumstances of the present cases, Article 10 is to be regarded as a *lex generalis* in relation to Article 11, a *lex specialis*. It is therefore unnecessary to take the complaints under Article 10 into consideration separately (see *Ezelin v. France*, 26 April 1991, § 35, Series A no. 202; *Kasparov and Others v. Russia*, no. 21613/07, §§ 82-83, 3 October 2013; and *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 85, 15 October 2015).

35. On the other hand, notwithstanding its autonomous role and particular sphere of application, Article 11 must, in the present cases, also be considered in the light of Article 10. The protection of personal opinions, secured by Article 10, is one of the objectives of freedom of peaceful assembly enshrined in Article 11 (see *Ezelin*, cited above, § 37, and *Kudrevičius and Others*, cited above, § 86).

2. The parties' submissions

36. The submissions made by the first, second and third applicants and the Government with respect to the dispersal of the demonstrations of 2 April and 17 April 2011, the applicants' arrests on those days and subsequent convictions were similar to those made by the relevant parties in respect of the similar complaint raised in the case of *Gafgaz Mammadov* (cited above, §§ 45-49).

37. The submissions made by the first and fourth applicants and the Government with respect to the events of 15 October 2011 and 20 October 2012 and the applicants' subsequent convictions were similar to those made by the relevant parties in respect of the similar complaints raised in the case of *Huseynli and Others* (cited above, §§ 81-83).

3. The Court's assessment

38. The Court notes from the outset that none of the official records or the domestic court decisions submitted by the parties suggests that the demonstration of 2 April 2011 was violent. The Court therefore accepts the second applicant's assertion that that demonstration had been intended to be peaceful and had been conducted in a peaceful manner up until his arrest.

39. Having regard to the facts of the present cases and their clear similarity to those in the cases of *Gafgaz Mammadov* and *Huseynli and Others* on all relevant and crucial points, the Court sees no particular circumstances that could compel it to deviate from its findings in those judgments, and finds that in the present cases the applicants' right to freedom of assembly was breached for the same reasons as those outlined in the said judgments (see *Gafgaz Mammadov*, cited above, §§ 50-68, and *Huseynli and Others*, cited above, §§ 84-101).

40. The applicants' arrests and administrative proceedings against them could not but have had the effect of discouraging them from participating in political rallies. Those measures undoubtedly have a chilling effect, which deters other opposition supporters and the public at large from attending demonstrations, and, more generally, from participating in open political debate (see *Gafgaz Mammadov*, cited above, § 67, and *Huseynli and Others*, cited above, § 99).

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

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

42. The applicants complained under Article 6 of the Convention that in all the sets of proceedings concerning the alleged administrative offences, they had not had a public and/or fair hearing. 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

43. The Government submitted that the second applicant had failed to complain before the domestic courts of lack of adequate time and facilities to prepare his defence, and of lack of effective legal assistance.

44. The Court accepts the Government’s objection with respect to the second applicant’s above-mentioned complaints, and finds that those complaints must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

45. The Government further submitted that the second applicant had failed to raise before the domestic courts his complaint regarding witnesses.

46. The Court notes that the material before it does not support the said objection of the Government. The documents included in the case file indicate that the second applicant complained in his written appeal that the first-instance court had questioned as witnesses only police officers and had not attempted to examine video recordings of the demonstration.

47. The Court considers that the second applicant’s complaints relating to the right to a reasoned decision are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that those complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

48. The Court also notes that the complaints under Article 6 of the Convention, raised by the first, third and fourth applicants are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that those complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties’ submissions

49. The submissions made by the applicants and the Government with respect to fairness of the administrative proceedings were similar to those made by the relevant parties in respect of the similar complaints raised in the cases of *Gafgaz Mammadov* (cited above, §§ 72-73) and *Huseynli and Others* (cited above, §§ 105-108).

2. The Court’s assessment

50. Having regard to the facts of the present cases and their clear similarity to those of the *Gafgaz Mammadov* case and the *Huseynli and*

Others case on all relevant and crucial points, the Court sees no particular circumstances that could compel it to deviate from its findings in those judgments, and finds that the administrative proceedings in the present cases, considered as a whole, were not in conformity with the guarantees of a fair hearing (see *Gafgaz Mammadov*, cited above, §§ 74-94 and 96, and *Huseynli and Others*, cited above, §§ 110-35).

51. There has accordingly been a violation of Article 6 §§ 1 and 3 of the Convention.

52. Furthermore, having regard to the above finding of a violation of Article 6 §§ 1 and 3 of the Convention – that the administrative-offence proceedings against the applicants, considered as a whole, were not in conformity with the guarantees of a fair hearing – the Court finds it unnecessary to examine the first, third and fourth applicants' arguments concerning the alleged lack of public hearings.

There is also no need to rule on the issue whether refusal by the fourth applicant of legal assistance at the trial constituted an unequivocal waiver of the right to a lawyer.

IV. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

53. The applicants further complained that their arrests, custody and in some cases also administrative detention had been in breach of Article 5 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (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

54. The Government submitted that the second applicant had failed to complain to the domestic courts that he had not been promptly informed of

the reasons for his arrest, and the arrest and custody had not been in conformity with domestic procedural rules.

55. The Court accepts the Government's objection with respect to the second applicant's above-mentioned complaints, and finds that those complaints must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

56. However, the Court notes that the second applicant's complaint that his arrest and administrative detention under Article 310.1 (failure to comply with a lawful order of a police officer) of the CAO had been arbitrary is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that that complaint is not inadmissible on any other grounds. It must therefore be declared admissible.

57. The Government also submitted that the fourth applicant had failed to complain to the domestic courts that the police officers arresting him had failed to properly explain his rights.

58. The Court notes that the material before it does not support the Government's above mentioned objection as to the exhaustion of domestic remedies. The fourth applicant raised the issue mentioned by the Government in his written appeal.

59. The Court further notes that the complaints under Article 5 of the Convention, raised by the first, third and fourth applicants are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that those complaints are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

60. The submissions made by the first, second and third applicants and the Government with respect to those applicants' arrests on 2 April and 17 April 2011 and subsequent convictions were similar to those made by the relevant parties in respect of the similar complaints raised in the case of *Gafgaz Mammadov* (cited above, §§ 99-102).

61. The submissions made by the first and fourth applicants and the Government with respect to the events of 15 October 2011 and 20 October 2012 and those applicants' subsequent convictions were similar to those made by the relevant parties in respect of the similar complaints raised in the case of Huseynli and Others (cited above, §§ 138-41).

2. The Court's assessment

62. Having regard to the facts of the present cases and their clear similarity to those in the cases of *Gafgaz Mammadov* and *Huseynli and*

Others on all relevant and crucial points, the Court sees no particular circumstances that could compel it to deviate from its findings in those judgments, and finds that in the present cases the applicants' right to liberty was breached for the same reasons as those outlined in the said judgments (see *Gafgaz Mammadov*, cited above, §§ 103-9, and *Huseynli and Others*, cited above, §§ 142-48).

63. Accordingly, there has been a violation of Article 5 § 1 of the Convention with respect to all four applicants.

64. In view of the nature and the scope of its finding above, the Court does not consider it necessary to examine the first, third and fourth applicants' other complaints under Article 5 of the Convention (see *Gafgaz Mammadov*, cited above, § 110).

V. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

65. The first and third applicants complained under Article 3 of the Convention that they had been subjected to ill-treatment while in police custody after their arrests on 17 April 2011, and that the domestic authorities had failed to conduct a timely and effective investigation in that regard.

66. The applicants submitted in particular that at the police station they had been subjected to ill-treatment by the deputy chief of the Nasimi District Police Office, police officer S.N. According to the first applicant, police officer S.N. ordered him to stand facing a wall and then beat him, punching his sides and thighs and hitting his neck. When he was hit on his neck, his forehead knocked against a wall and began to bleed. According to the third applicant, when he was brought before police officer S.N. the latter asked him why he had come to Baku from his hometown Sabirabad, and without waiting for his response began punching him in the abdomen. He sank down because of the pain, and S.N. continued kicking him. Then S.N. lifted him up and slapped his face. A number of other police officers were present.

67. The Government submitted that the applicants had not exhausted domestic remedies, as they had not lodged a complaint with a court against the investigator's decisions refusing to open criminal cases into allegations of ill-treatment. They further submitted that the investigator's decision of 2 July 2011 had been sent to the first applicant and the decision of 23 May 2011 had been sent to the third applicant on the same dates. The Government lastly argued that there had been no violation of either the substantive or the procedural limb of Article 3.

68. In response to the Government's objection of non-exhaustion of domestic remedies, the applicants asserted that for a certain period of time neither they nor their lawyer had been informed about any actions taken by the authorities to investigate their ill-treatment complaints, and they had

therefore decided to apply to the Court complaining about both the alleged ill-treatment and the inactivity of the authorities. Later, in January 2012, after making enquiries about the outcome of the investigation, they managed to obtain copies of the investigator's decisions at issue.

The applicants also argued that complaints about ill-treatment by the police lodged before the domestic authorities (investigating authorities or courts) were not successful, save for rare occasions.

69. The Court observes firstly that the applicants failed to complain to a supervising court against the investigator's decisions of 23 May and 2 July 2011 not to open criminal cases into allegations of ill-treatment in respect of them (compare *Abbas Ahmadov v. Azerbaijan* (dec.), no. 55650/07, §§ 16 and 42, 12 November 2013; contrast with *Mammadov v. Azerbaijan*, no. 34445/04, §§ 23-27, 11 January 2007; and *Rizvanov v. Azerbaijan*, no. 31805/06, §§ 16-20, 17 April 2012). The Court reiterates that although such supervising court has no competence to institute or to re-open criminal proceedings its supervising power on the decisions of the prosecuting authorities is a substantial safeguard against the arbitrary exercise of powers by the investigating authorities (see *Abbas Ahmadov* (dec.), cited above, § 42).

70. It is necessary to examine whether there were any special circumstances in the present cases which would dispense the applicants from the obligation to challenge the investigator's decisions at issue. The Court notes from the outset that the parties agreed on the fact that the applicants had been informed of the decisions at issue (contrast with *Muradova v. Azerbaijan*, no. 22684/05, § 131, 2 April 2009). However, the parties disputed the dates on which those decisions had been sent to the applicants (see paragraphs 67-68 above). In this respect the Court observes that the Government failed to submit any evidence proving that the decisions of 23 May and 2 July 2011 had indeed been sent to the applicants on the same dates. The Court also observes that the applicants failed to submit any evidence that they had received those decisions only in January 2012. In particular, though the applicants argued that they had lodged before the investigating authorities enquiries about the outcome of the investigation, they failed to submit copies of those enquiries. However, even assuming that they indeed received the decisions at issue only in January 2012, the Court sees no circumstances which would prevent the applicants from complaining against those decisions to a supervising court afterwards. In addition, the applicants have not shown convincingly that such a review was bound to be ineffective. It follows therefore that the applicants failed to exhaust a domestic remedy which was relevant and available (compare *Abbas Ahmadov* (dec.), cited above, § 41-43).

71. The Court observes secondly that both applicants raised their ill-treatment complaints during their trial, notably in their appeals against first-instance court's decisions lodged before the Baku Court of Appeal (see

paragraph 21 above). However, the Baku Court of Appeal did not examine those complaints on the merits (see paragraph 22 above). The Court reiterates that where an applicant fails to exhaust relevant and available domestic remedies in respect of a complaint of ill-treatment, but instead raises such a complaint subsequently during his trial before a trial court which does not take cognisance of the merits of the applicant's complaint, the applicant cannot be considered to have exhausted domestic remedies (see *Abbas Ahmadov* (dec.), cited above, §§ 44-46, and *Akif Mammadov v. Azerbaijan* (dec.), no. 46903/07, § 32, 13 May 2014).

72. In these circumstances the Court finds that the first and third applicants' complaints under Article 3 of the Convention (about alleged ill-treatment and lack of effective investigation) must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

73. The Court observes lastly that there is nothing in the material before it to suggest that there was a significant period of inactivity on the part of the domestic authorities called to investigate the first and third applicants' allegations of ill-treatment. The Court finds therefore that those applicants' complaints in this regard must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention as unsubstantiated.

VI. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

74. The second applicant complained that a heavier penalty had been imposed on him than the one applicable at the time of the commission of the offence. In accordance with the CAO, he should not have been sentenced to administrative detention because he had a second-degree disability. Article 7 of the Convention, in so far as relevant, reads as follows:

> "... Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. ..."

75. The applicant emphasised that during the administrative proceedings following his arrest on 2 April 2011 (notably, in his written appeal against the first-instance court's decision) he had complained about the first-instance court's failure to take into consideration his second-degree disability. However, the Baku Court of Appeal ignored that complaint when it adopted its decision of 13 April 2011 upholding the decision of the first-instance court.

76. In response to the Government's objection (see below) the applicant argued that instead of simply ignoring his complaint about his being sentenced to a heavier penalty than the one applicable at the time of the commission of the offence, the domestic courts should have made relevant enquiries on their own motion.

77. The applicant also submitted to the Court a copy of a certificate, issued by the State Social Protection Fund on 27 July 2015, confirming that he was receiving a pension for his second-degree disability.

78. In their observations on the admissibility of the above mentioned complaint, the Government submitted that the applicant had failed to present to the domestic courts any appropriate document proving his second-degree disability. They argued that consequently the applicant's complaint under Article 7 of the Convention was unsubstantiated.

79. Even assuming that the second applicant's complaint under Article 7 of the Convention were admissible, the Court considers that it is not necessary to examine separately that complaint on the merits since the Court has already found a violation of Article 5 of the Convention with respect to that applicant.

VII. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

80. The second applicant raised his complaints under Articles 5, 6 and 11 of the Convention also with respect to his arrest on 16 April 2011 and the subsequent administrative proceedings against him. According to the applicant, he intended to participate in the demonstration of 17 April 2011. His arrest and conviction to 7 days' administrative detention prior to that demonstration had been measures used by the authorities to punish him for his political activity and to prevent him from participating in that opposition protest. The administrative proceedings in question were unfair and the deprivation of his liberty was arbitrary.

81. In their observations on the admissibility of the above mentioned complaints the Government argued that the applicant had not complied with the six-month rule. In support of their argument they submitted a copy of a receipt (*qəbz*), according to which the final decision concerning the case, the decision of the Baku Court of Appeal adopted on 29 April 2011, had been given to the applicant on the same day.

82. The applicant argued that he had received the final decision in October 2011 and that his signature on the receipt dated 29 April 2011 had been falsified.

83. The Court notes that the applicant failed to submit any proof that he had received the final decision on a date different from the one indicated on the receipt. There are also no elements leading the Court to doubt that the signature of the receipt is authentic.

84. The applicant submitted his above mentioned complaints to the Court on 2 November 2011, that is more than six months after the receipt of the final decision concerning the case. Accordingly, this part of the application has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. In respect of non-pecuniary damage, the first applicant claimed 26,000 euros (EUR), the second applicant claimed EUR 30,000, the third applicant claimed EUR 17,000 and the fourth applicant claimed EUR 20,000.

87. The Government submitted that the applicants' claims were unsubstantiated and unreasonable.

88. With respect to the fourth applicant the Government submitted additionally that the amount of EUR 4,000 would constitute sufficient compensation under this head.

89. 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 the second, third and fourth applicants the sum of EUR 8,000 each under this head, plus any tax that may be chargeable on this amount. To the first applicant the Court awards EUR 10,000, plus any tax that may be chargeable on this amount.

B. Costs and expenses

90. The first applicant claimed EUR 4,230, the second applicant claimed EUR 2,900, the third applicant claimed EUR 2,730 and the fourth applicant claimed EUR 1,500 for legal fees incurred before the domestic courts and/or the Court. In support of their claims, they submitted contracts for legal and translation services.

91. The Government considered that the applicants' claims were excessive and could not be regarded as reasonable as to quantum. In particular, they argued that the first, second and third applicants had failed to produce any evidence concerning translation services. In addition, Mr R. Mustafazade had never represented the first, second and third applicants before the domestic courts.

92. The Government submitted that, taking into account the above considerations, the first and third applicants each could claim EUR 900, and the fourth applicant could claim EUR 1,000 under this head.

93. 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. The Court notes that in the proceedings before it the first, second and third applicants were represented by the same lawyers, Mr Mustafazade and Mr Mustafayev, whose submissions in all three cases were similar.

94. Taking the above considerations into account, the Court awards a total amount of EUR 3,000 to the first, second and third applicants jointly in respect of the legal services rendered by Mr Mustafazade and Mr Mustafayev, less EUR 200 already paid in legal aid by the Council of Europe, to be paid directly into the representatives' bank account. To the fourth applicant the Court awards EUR 1,500.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the complaints concerning Articles 5, 6, 10 and 11 of the Convention raised in applications nos. 69397/11 and 73706/11 admissible and the remainder of those applications inadmissible;

3. *Declares* the complaints concerning Articles 5, 6, 7, 10 and 11 of the Convention raised in application no. 70966/11 with respect of the dispersal of the demonstration of 2 April 2011 and the subsequent administrative proceedings admissible and the remainder of that application inadmissible;

4. *Declares* application no. 935/12 admissible;

5. *Holds* that there has been a violation of Article 11 of the Convention on account of the dispersals of the demonstrations of 2 April and 17 April 2011 and the first, second and third applicants' arrests and convictions;

6. *Holds* that there has been a violation of Article 11 of the Convention on account of the fourth and first applicants' arrests on 15 October 2011 and 20 October 2012 respectively and their subsequent convictions;

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

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

9. *Holds* that there is no need to examine the complaint under Article 7 of the Convention raised in application no. 70966/11;

10. *Holds*

(a) that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 10,000 (ten thousand euros) to the first applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 8,000 (eight thousand euros) each to the second, third and fourth applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 2,800 (two thousand eight hundred euros) jointly, plus any tax that may be chargeable to the first, second and third applicants, in respect of costs and expenses, to be paid directly into their representatives' bank account;

(iv) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the fourth applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

11. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 13 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin
Acting Deputy Registrar

André Potocki
President

APPENDIX

No.	Application no.	Applicant's name date of birth place of residence	Applicant's arrest and police custody	Applicant's trial	First-instance judgment	Appellate judgment
1.	69397/11	**Fakhraddin ABBAS** 1954 Sumgait	The applicant was arrested during the dispersal of the demonstration of 17 April 2011. According to the official records, he was arrested because he had attempted to hold an unlawful demonstration and continued to protest despite the order to disperse. The applicant was not given access to a lawyer. He was not served with a copy of the administrative-offence report or with other documents from his case file. He was kept in police custody overnight prior to being brought before the court.	The appointed State-funded lawyer (Mr O.A.) stated in general terms that the applicant's actions had not qualified as an administrative offence and asked the court to discontinue the case. Only the police officers who, according to official records, had arrested the applicant or prepared the administrative-offence report were questioned as witnesses. The peaceful nature of the demonstration was not taken into account by the court.	Decision of the Nasimi District Court of 18 April 2011: the applicant was convicted under Article 310.1 of the CAO to 7 days' administrative detention.	Decision of the Baku Court of Appeal of 21 April 2011: the first-instance court's decision was upheld. The peaceful nature of the demonstration was not taken into account by the appellate court.
			The applicant was arrested on 20 October 2012. According to the official records, he was arrested because he had disobeyed a lawful order of the police to stop swearing loudly, without addressing anyone in particular. According to the applicant, the demonstration of 20 October 2012 was to start at 3 p.m. However, in the morning of the same day some police officers approached him near the place where he lived and requested him to follow them to a police station. He obeyed that request. The applicant was not given access to a lawyer. He was not served with a copy of the administrative-offence report or with other documents from his case file. He was brought before the court on the day of his arrest.	The applicant was not represented by any lawyer. Only the police officer who, according to official records, had arrested the applicant was questioned as a witness.	Decision of the Sumgait District Court of 20 October 2012: the applicant was convicted under Article 310.1 of the CAO to a fine of 20 Azerbaijani manats (AZN).	Decision of the Sumgait Court of Appeal of 19 December 2012: the applicant's penalty was changed (a fine was substituted by a reprimand). The applicant's arguments about political motives of the arrest were ignored by the appellate court.

2.	70966/11	**Kochar NAGIYEV** 1966 Baku	The applicant was arrested during the dispersal of the demonstration of 2 April 2011. According to the official records, he was arrested because he had attempted to hold an unlawful demonstration and continued to protest despite the order to disperse. He was brought before the court on the day of his arrest.	Only the police officers who, according to official records, had arrested the applicant were questioned as witnesses. The peaceful nature of the demonstration was not taken into account by the court.	Decision of the Sabail District Court of 2 April 2011: the applicant was convicted under Article 310.1 of the CAO to 7 days' administrative detention.	Decision of the Baku Court of Appeal of 13 April 2011 (received by the applicant on 18 October 2011): the first-instance court's decision was upheld.
3.	73706/11	**Sahib RUSTAMLI** 1956 Sabirabad	The applicant was arrested during the dispersal of the demonstration of 17 April 2011. According to the official records, he was arrested because he had attempted to hold an unlawful demonstration and continued to protest despite the order to disperse. The applicant was not given access to a lawyer. He was not served with a copy of the administrative-offence report or with other documents from his case file. He was kept in police custody overnight prior to being brought before the court.	There is no record showing that the appointed State-funded lawyer (Mr O.A.) made any oral or written submissions on behalf of the applicant. Only the police officers who, according to official records, had arrested the applicant or prepared the administrative-offence report were questioned as witnesses. The peaceful nature of the demonstration was not taken into account by the court.	Decision of the Nasimi District Court of 18 April 2011: the applicant was convicted under Article 310.1 of the CAO to 5 days' administrative detention.	Decision of the Baku Court of Appeal of 4 May 2011: the first-instance court's decision was upheld. The peaceful nature of the demonstration was not taken into account by the appellate court.
4.	935/12	**Niman ASGAROV** 1956 Goychay	The applicant was arrested on 15 October 2011. According to the official records, the applicant was arrested because he had disobeyed a lawful order of the police to stop "insincere" behaviour (*qeyri səmimi*) and swearing loudly in front of the municipality. According to the applicant, police officers approached him when he had just left a café where he had been seeing an acquaintance. He did not disobey those police officers. Two days before his arrest, on 13 October 2011, he and another person, Mr J.A., were called to a police office and questioned about the rally planned to be held on 18 October 2011. The applicant was not given access to a lawyer. He was kept in police custody overnight prior to being brought before the first-instance court.	The applicant refused an assistance of the State-funded lawyer (Mr R.V.). He was not represented by any lawyer. Only the police officers who had arrested the applicant or prepared the administrative-offence report were questioned as witnesses.	Decision of the Goychay District Court of 16 October 2011: the applicant was convicted under Article 310.1 of the CAO to 5 days' administrative detention.	Decision of the Sheki Court of Appeal of 31 October 2011: the first-instance court's decision was upheld. The applicant's arguments about political motives of the arrest were ignored by the appellate court.