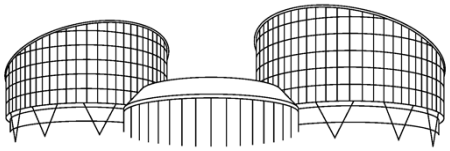

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KHADIJA ISMAYILOVA v. AZERBAIJAN (No. 2)

(Application no. 30778/15)

JUDGMENT

Art 5 § 1 (c) • Reasonable suspicion • Minimum standard of "reasonableness" of suspicion not met • Applicant's arrest and detention initially based on false claim made as a result of coercion • No facts, information or evidence supporting additional charges related to applicant's journalistic activities Art 5 § 4 • Review of lawfulness of detention • Systemic failure on the part of domestic courts to verify the existence of a reasonable suspicion underpinning the applicant's arrest and detention Art 6 § 2 • Presumption of innocence • Public statement of the Prosecutor General's Office issued shortly after the applicant's arrest and containing declaration of her guilt Art 18 (+ Art 5) • Restriction for unauthorised purposes • Detention of a well-known investigative journalist and government critic in order to silence and punish her for her journalistic activities

STRASBOURG

27 February 2020

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khadija Ismayilova (no. 2) v. Azerbaijan,

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

Síofra O'Leary, *President,*
Ganna Yudkivska,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia,
Anja Seibert-Fohr, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 4 February 2020,

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

PROCEDURE

1. The case originated in an application (no. 30778/15) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Ms Khadija Rovshan gizi Ismayilova ("the applicant"), on 8 June 2015.

2. The applicant was represented by Ms A. Clooney and Ms N. Jansen, lawyers practising in London, and Mr Y. Imanov and Mr Namazli, lawyers based in Azerbaijan. On 1 July 2016 Ms A. Vermeer replaced Ms N. Jansen as co-counsel with Ms A. Clooney. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

3. The applicant complained of a breach of her rights under Article 5, Article 6 § 2, Article 10 and Article 18 of the Convention. In particular, she complained that her arrest and pre-trial detention had not been based on a reasonable suspicion and had been applied for purposes other than those prescribed in the Convention.

4. On 26 August 2015 notice of the application was given to the Government. The applicant and the Government each submitted written observations on the admissibility and merits of the case. The Council of Europe Commissioner for Human Rights made use of his right under Article 36 § 3 of the Convention to intervene as a third party, and submitted observations in accordance with Rule 44 § 2 of the Rules of Court. Two joint third-party comments were also received from the following organisations, which had been granted leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3): (1) Freedom Now, Helsinki Foundation for Human Rights, Human Rights House Foundation, International Partnership for Human Rights; and (2) ARTICLE 19, PEN International, International Media Support, International Partnership for Human Rights and Committee to Protect Journalists.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Baku.

A. The applicant's background and her employment with Radio Free Europe/Radio Liberty

6. The applicant is a well-known investigative journalist and civil society activist. She is known for her strong criticism of the Azerbaijani government and was involved earlier in her career in numerous journalistic investigations relating, in particular, to cases of alleged corruption and business activities of the members of the Government and their families.

7. In November 2007 the applicant started to work as a freelance journalist for the Baku "bureau" of the Azerbaijani service ("Azadliq Radio") of Radio Free Europe/Radio Liberty ("RFE/RL"). RFE/RL is a non-profit international broadcasting corporation with its headquarters in Prague and several local bureaus across its broadcast region, including one in Baku. It is funded by the U.S. Congress through the United States Agency for Global Media.

8. On 1 July 2008 the applicant was recruited to the Baku bureau based on a fixed-term employment contract. The relevant parts of that contract, submitted by her, read as follows:

> "[J.C.], (hereafter "the employer") representing the management of the office of Radio Free Europe/Radio Liberty in Azerbaijan located at [address of the office] and [the applicant] ("the employee") signed the employment contract on the terms below.
>
> ...
>
> **Article 3: Duties of the Employee**
>
> 3.1. The employee shall work as **Acting Head of Bureau** ...
>
> ...
>
> **Article 5: Subordination**
>
> 5.1. The employee shall be subordinate to the director of the Azerbaijani Service in Prague and all decisions made by the director within his or her mandate shall be binding for the employee ..."

9. On 1 July 2009 the applicant was appointed as head of the bureau and her employment contract was further extended. The relevant parts of the "Amendment to the employment contract" submitted by the applicant read as follows:

> "[E.P.], (hereafter "the employer") representing the management of the office of Radio Free Europe/Radio Liberty in Azerbaijan located at [address of the office] and

[the applicant] ("employee") signed the Amendment to the employment contract on the terms below.

"**Article 3: Duties of the Employee**

3.1. The employee shall work as **Head of Bureau** and ... perform the duties stipulated in the job description appended to the contract (appendix 1) as well as the duties assigned by the management ...

APPENDIX 1

JOB DESCRIPTION...

General overview of the position: The Head of Bureau shall be subordinate to the director of the Service. He or she shall be responsible for the quality of all products produced by bureau employees and staff and for management of the team with a view to expanding the coverage area. The Head of Bureau shall receive all instructions related to his or her area of responsibility from the director of the Service.

DUTIES

...

In the area of team management

- Prepares the work schedule of all staff in order to ensure the resources efficiency of the bureau (workforce, equipment, finance)
- Develops the team: recruits and motivates staff, defines training needs for individual journalists and the entire team, assists in training, carries out annual performance reviews ..."

10. On 1 October 2010 the applicant's employment contract with RFE/RL was terminated and from then until December 2014 she worked for the latter on a freelance basis.

B. Events preceding the applicant's arrest

11. Between 2010 and 2012 the applicant wrote a number of investigative articles which were published on the website of RFE/RL and elsewhere concerning the alleged involvement of President Aliyev's family in illegal business activities. During this period, the applicant published various articles, including most notably:

- "Aliyev's Azerbaijani empire grows, as daughter joins the game";
- "Azerbaijani President's daughters tied to fast-rising telecoms firm";
-."Azerbaijani Government awarded goldfield rights to President's family";
- "President's family benefits from Eurovision Hall".

12. According to the applicant, as a result of her journalistic investigations and published articles, she was constantly threatened and harassed. In particular, in 2012 intimate videos unlawfully recorded by a camera hidden in her bedroom were disseminated on the internet in order to silence her as a journalist (for further details concerning these events see

Khadija Ismayilova v. Azerbaijan, nos. 65286/13 and 57270/14, 10 January 2019).

13. In 2013 and 2014 the Prosecutor General's Office instituted criminal proceedings concerning alleged irregularities in the financial activities of a number of non-governmental organisations. Several NGO activists and human rights defenders were later arrested in the context of those proceedings and charged with criminal offences such as illegal entrepreneurship, embezzlement, tax evasion and abuse of power (see *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, 20 September 2018; *Mammadli v. Azerbaijan*, no. 47145/14, 19 April 2018; and *Rasul Jafarov v. Azerbaijan*, no. 69981/14, 17 March 2016).

14. During that period numerous articles about the applicant and other civil society activists and human rights defenders were published in the State media and in the media allegedly close to the government. In those articles, the applicant and other activists were described as "spies for foreign interests" and "traitors" (for examples of some of these comments, see *Rasul Jafarov*, cited above, §§ 36-40).

15. Two days prior to the applicant's arrest, on 3 December 2014, State-owned news agencies published a sixty-page manifesto written in Russian by R.M., the then head of the Presidential Administration, entitled "The World Order of Double Standards and Modern Azerbaijan" ("*Миропорядок двойных стандартов и современный Азербайджан*"). The article, among other things, accused various NGOs operating in the country of being the "fifth column of imperialism". As regards the applicant, the relevant parts of the article read as follows:

> "... [The applicant] ... zealously broadcasts anti-Azerbaijani programs, makes statements of an obscene nature, openly demonstrates a hostile attitude towards well-known Azerbaijani public figures and spreads insulting lies. Obviously, such a challenge to society is appreciated by her foreign patrons, but not by patriots of the motherland. Furthermore, the position she holds has nothing to do with the journalistic profession. The public strongly believe that the employees of "Azadliq" radio were very slippery in their ways. There is no need to prove that the dissemination of fabricated information is tantamount to working for the foreign secret services. This is treason. "If the symbol of democracy is Khadija Ismayilova, then it is awful to imagine what future awaits society" – this is the opinion of journalists and ordinary people with a normal mindset ..."

C. Institution of criminal proceedings against the applicant

1. The applicant's arrest and remand in custody on a charge of incitement to suicide

16. On 20 October 2014 T.M., a former colleague of the applicant at Azadliq Radio, attempted to commit suicide.

17. On 24 October 2014 the Prosecutor General's Office instituted criminal proceedings under Article 125 (incitement to suicide) of the Criminal Code.

18. On 25 November 2014 T.M. lodged a complaint with the Prosecutor General's Office accusing the applicant of inciting him to commit suicide.

19. According to the applicant, on 26 November 2014 T.M. underwent an expert medical examination which found that he was suffering from "affective personality disorder" with depressive episodes and had attempted to commit suicide on three occasions in the past.

20. On 5 December 2014 the applicant was questioned at the Prosecutor General's Office in the presence of her lawyer and T.M. During questioning the applicant denied any wrongdoing and stated that in fact she had had no contact with T.M. since 9 March 2014.

21. After questioning the applicant was officially charged with the criminal offence of incitement to suicide under Article 125 of the Criminal Code. The relevant parts of the decision to charge her read as follows:

> "... [The applicant] is accused of regularly humiliating the dignity of the victim, who was dependent on her in service-related and other ways and of driving him to attempt suicide by using threats against him.
>
> Notably, [the applicant], while working as a freelance journalist in public and non-governmental organisations, and as a leading journalist in the Baku office of "Azadliq Radio", met the journalist, [T.M.], who worked in the same office[.] As they had an intimate relationship, [the applicant], by using her authority in the organisations she had worked, directly helped [T.M.] in his job [and helped him] to establish connections in those organisations, to improve his living conditions and financial situation[.] However, on 8 March 2014, after discovering that [T.M.] had entered in close relationship with another woman whom he intended to marry, [the applicant], by using her authority in the said organisations, routinely humiliated his dignity on social networks and among their acquaintances[.] By her actions, which aimed at restricting [T.M.]'s journalistic activity, [the applicant] managed to make [T.M.] lose his job, worsen his financial situation and place him in a position of dependence on her[.] [She] threatened him [that] if their intimate relationship was not rekindled, [she would] hinder his work in his field, continue to spread pejorative information about him and [would not] forgive [the fact that he preferred to] have a relationship with another woman[.] Although [T.M.] informed [the applicant] that if she did not back off, he would kill himself, [the applicant] ignored [this] and continued her actions[.] As a result, at around 5 p.m. on 20 October 2014 [T.M.], after deciding to kill himself, attempted to commit suicide in the National Park by ingesting "Zinc oxide", a drug used on rodents[.] However, [after] being found unconscious by [some] citizens, he was transferred by ambulance to the Toxicology Unit of the Clinical Medical Centre where his life was saved as a result of medical treatment.
>
> Thus, [the applicant] committed a criminal offence provided by Article 125 of the Criminal Code the Republic of Azerbaijan ..."

22. On the same day the Sabail District Court, in response to a request by the prosecutor, remanded the applicant in custody for a period of two months. The court justified the detention as follows:

> "In accordance with the presumption of innocence, the court, having examined the request of the investigating authority, the request of the prosecutor supervising the preliminary investigation and the material of the criminal case,
>
> taking into account that the acts imputed to the accused fall within the category of less serious crimes ("*təqsirləndirilən şəxsə istinad edilən əməllərin az ağır cinayətlər kategoriyasına aid olmasını*"),
>
> and [taking into account] the nature of these acts and the circumstances of their commission,
>
> as well as [taking into account] that the risks that [applicant might abscond, obstruct the proceedings or reoffend] are real and well-founded,
>
> considers that the preventive measure of remand in custody must be applied with respect to [the applicant]."

23. On 8 December 2014 the applicant appealed against this decision, claiming that her detention was unlawful and unjustified. She complained, in particular, that the charges brought against her were not supported by any evidence, that there was no reasonable suspicion that she had committed a criminal offence and that the first-instance court had failed to verify the existence of such a suspicion. In this context, she referred to the report concerning T.M.'s medical examination of 28 November 2014, which stated that T.M. had been suffering from "affective personality disorder" with depressive episodes for the last one or two years and had attempted to commit suicide on three occasions.

24. On 11 December 2014 the Baku Court of Appeal dismissed the applicant's appeal and upheld the decision of 5 December 2014 using identical wording. The above-mentioned complaints were left unanswered by the appellate court.

25. On 24 December 2014 the applicant lodged an application with the Sabail District Court asking for her pre-trial detention to be replaced by house arrest or her release on bail. She claimed, in particular, that there was no evidence that she had been involved in any way in T.M.'s attempted suicide and that her detention was not justified. She further noted that there was no reason for her continued detention as she had a permanent place of residence and there was no risk of her absconding from or obstructing the investigation.

26. On 26 December 2014 the Sabail District Court dismissed the application, finding that there was a risk of her absconding from and obstructing the investigation.

27. On 30 December 2014 the Baku Court of Appeal upheld the Sabail District Court's decision of 26 December 2014.

2. Public statements made by T.M. following the applicant's arrest

28. On 27 December 2014 T.M. published a number of posts on his Facebook profile announcing his intention to withdraw his complaint

against the applicant. He was then immediately contacted by journalists from Meydan TV, an online news portal, to whom he confirmed his intention. He also stated that on the same day he had tried to travel to Moscow but the authorities had not allowed him to leave the country. He had then found out that on 26 November 2014, a day after he had lodged a formal complaint against the applicant, the authorities had imposed a travel ban on him. T.M.'s Facebook posts were repeated by Meydan TV on its website. The posts read as follows:

> "I am asking for help from independent lawyers. I am withdrawing my complaint lodged against [the applicant]. Someone help me urgently. There is a risk of arrest."

29. About three minutes later, T.M. published the following post:

> "I am not afraid of [being] arrested, it's just that I could be arrested without having time to withdraw my complaint. I am announcing that I want to withdraw my complaint lodged against [the applicant] and I will do it."

30. About an hour later, T.M. wrote the following:

> "I have been arrested!!!"

31. On 8 April 2015 T.M. stated in an interview with Azadliq Radio that he had sent a letter to the Prosecutor General's Office stating his intention to withdraw his complaint against the applicant. He further stated that the applicant had had no involvement in his attempted suicide and that he had been suffering from psychological problems at that time. He pointed out that he had been previously unable to withdraw his complaint for certain reasons on which he did not wish to elaborate further. He had also asked the Prosecutor General's Office to lift the travel ban imposed on him.

32. On 3 May 2015 a personal video statement by T.M., which had apparently been recorded on 7 April 2015, was published on YouTube. In it he complained that he had been subjected to coercion by the authorities, and placed in unacknowledged detention. He stated, in particular, the following:

> "I would like to state that on 20 October 2014 I attempted to commit suicide by ingesting rat poison ... I was admitted to the Toxicology [Unit], where the poison in my blood was removed. The Baku prosecutor's office, by using this opportunity, stated that I had done it purely because of [the applicant] and I was forced by the first deputy prosecutor of Baku, [A.A.], and the investigator, [V.S.], to make a formal written complaint [against the applicant] ...
>
> I was also stopped by officers from the MNS [Ministry of National Security] near the "28 May" metro station [who] threatened ... that if I did not agree, the video footage made inside my apartment would be made public ... Thus, I was obliged to make a formal written complaint ...
>
> On 27 December 2014 I was leaving Azerbaijan for Moscow and I was going to record and publish this video afterwards ... However, it happened that they banned me from leaving the country – I had made the formal written complaint [against the applicant] on 25 November and on 26 November they imposed a travel ban on me. Despite the travel ban, I tried to leave the country, but it did not work out. On 27 December I was arrested in the town of Goychay [T.M.'s hometown] by police

> officers ... and was taken to the Goychay police station and from there two police officers and two officers from [MNS] took me to Baku. Until 14 February they kept me in my rented apartment at [location of the apartment] like under house arrest, they hacked my Facebook [account], my email address ..."

33. T.M. further alleged in his statement that on 14 February 2014 officers from the MNS had subjected him to ill-treatment and had forcibly placed him in a psychiatric facility. He had allegedly been released on 28 February 2014 and had returned to his hometown, from where he had written to the Prosecutor General about the withdrawal of his complaint against the applicant and had also asked for the travel ban imposed on him to be cancelled.

3. Extension of the applicant's pre-trial detention and additional charges brought against her

34. On 27 January 2015 the Sabail District Court, in response to a request by the prosecutor, extended the applicant's pre-trial detention until 24 March 2015 based on the same grounds. The applicant appealed, reiterating her complaints.

35. On 6 February 2015 the Baku Court of Appeal upheld the decision of 27 January 2015, leaving the applicant's complaints without consideration.

36. On 13 February 2015 the applicant was charged with additional criminal offences under Articles 179.3.2 (high-level embezzlement), 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (aggravated abuse of power) of the Criminal Code. The charges against the applicant mainly concerned her activity as head of the Baku bureau of Azadliq Radio in the period between 1 July 2008 and 1 October 2010. She was accused of the following:

(i) Misappropriating State property and abusing her power by illegally employing several individuals to work at the Baku bureau of Azadliq Radio on the basis of service contracts under the Civil Code (which were subject to a simplified low tax rate of 4%). In breach of the requirements of the Labour Code, the applicant had not concluded employment contracts with those people (which would have been subject to personal income tax at a rate of 14%) and had therefore inflicted material damage on the State in the amount of 17,992.60 Azerbaijani new manats (AZN), which represented a difference of 10% between the above rates;

(ii) In her capacity as head of the Baku bureau of Azadliq Radio, which was a non-commercial organisation, engaging in illegal entrepreneurship by continuing the radio broadcasting activities of the Baku bureau despite the fact that the broadcasting licence given to the bureau by the National Television and Radio Council of the Republic of Azerbaijan had expired on 1 January 2008 and had not been renewed thereafter. Furthermore, since 1 October 2010 she had been working for Azadliq Radio without being

accredited with the Ministry of Foreign Affairs of the Republic of Azerbaijan as a representative of the foreign media. Consequently, in the period between 1 July 2008 and 1 December 2014 the applicant had acquired profit through illegal entrepreneurship activity by receiving and paying money to herself and other employees of the Baku bureau "disguised as salaries and service fees" in the total amount of AZN 335,880.54;

(iii) While head of the Baku bureau of Azadliq Radio in the period between 1 July 2008 and 1 October 2010, avoiding payment of profit tax in the amount of AZN 45,145.63.

37. On 6 March 2015 the Nasimi District Court extended the applicant's pre-trial detention until 24 May 2015. The detention was justified on the grounds that, given the complexity of the case, a number of investigative steps needed to be carried out and more time was needed to complete the investigation. The applicant appealed, claiming that the first-instance court had failed to justify the extension of her pre-trial detention, T.M. had withdrawn his complaint against her and there was no evidence whatsoever that she had committed any criminal offence, including those related to her activities at Azadliq Radio.

38. On 12 March 2015 the Baku Court of Appeal dismissed the appeal and upheld the first-instance court's decision, leaving the applicant's complaints without consideration.

39. On 14 May 2015 the Nasimi District Court extended the applicant's pre-trial detention until 24 August 2015. The decision was identical in its wording to the court's decision of 6 March 2015.

40. On 21 May 2015 the Baku Court of Appeal dismissed an appeal by the applicant against the Nasimi District Court's decision of 14 May 2015, and extended her pre-trial detention until 22 August 2015.

41. Meanwhile, on 14 May 2014 the applicant lodged an application with the Nasimi District Court, asking for her pre-trial detention to be replaced by house arrest or her release on bail. The applicant reiterated her complaints that there was no reasonable suspicion of her committing a crime and that her continued detention was unjustified. In addition, she stated that she had been recognised as a prisoner of conscience by an international NGO, which showed that she had been arrested and prosecuted for her political and human rights activities, in breach of Article 18 of the Convention.

42. On 9 July 2015 the Prosecutor General's Office drew up a bill of indictment and the case went to trial.

43. On 24 July 2015 the Baku Court for Serious Crimes held a preliminary hearing and ruled that the applicant's "preventive measure of remand in custody should remain unchanged."

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

44. On 1 September 2015 the Baku Court for Serious Crimes found the applicant guilty under Articles 179.3.2 (high-level embezzlement), 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (aggravated abuse of power) of the Criminal Code and sentenced her to seven and a half years' imprisonment and a ban on holding managerial and financial posts in public and local self-government bodies for a period of three years. As regards the charge under Article 125 (incitement to suicide) of the Criminal Code, the court acquitted her for lack of evidence.

45. On 25 November 2015 the Baku Court of Appeal upheld the judgment of 1 September 2015.

46. On 25 May 2016 the Supreme Court quashed the part of the judgment of 25 November 2015 related to the applicant's conviction under Articles 179 and 308 of the Criminal Code for lack of the constituent elements of the crime and reduced her sentence to three and a half years' imprisonment suspended on probation. She was released from detention.

D. Statement of 6 December 2014 by the Prosecutor General's Office

47. On 6 December 2014, following the applicant's arrest, the Prosecutor General's Office made a public statement entitled "Illegal acts of Khadija Ismayilova have been unmasked" ("*Xədicə İsmayılovanın qanunazidd əməlləri ifşa edilmişdir*"). It indicated, in particular:

> "The prosecutor's office of the Sabail district has instituted criminal proceedings under Article 125 (incitement to suicide) of the Criminal Code into the fact that on 20 October 2014 [T.M.], a reporter from "Azadliq Radio" and "Meydan TV, attempted to commit suicide by ingesting "Zinc oxide"...,
>
> [T.M.] applied to the General Prosecutor's office and asked to take the appropriate measures against [the applicant] on account of her...driving him to attempt suicide.
>
> The investigation has established that [T.M.] since February 2013 started to work in "Azadliq Radio"... where he met [the applicant] and get involved in close relationship with her ...
>
> The investigation has also established that on 1 May 2014 [T.M.] attempted to commit suicide as a result of threats and pressure used by [the applicant] ...
>
> [The applicant] was charged as an accused in the criminal case on a reasonable suspicion that [the applicant] continued to perform illegal acts against [T.M.] despite the fact that [T.M.] warned her that if she did not leave him alone, he would kill himself ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

48. A summary of domestic law, including most of the relevant provisions of the Criminal Code and the Code of Criminal Procedure, as

well as the relevant international reports, may be found in *Rasul Jafarov* (cited above, §§ 50-84). Further information on the domestic law relevant to the present case is summarised below.

A. Criminal Code

49. The relevant provisions of the Criminal Code provided as follows at the material time:

Article 125. Incitement to violence

"Incitement of a victim who is dependent on the accused for material, service-related or other reasons to commit or attempt suicide by means of cruel treatment, systematic humiliation of his dignity, use of threats

is punishable by deprivation of liberty for a period of three to seven years."

B. Code of Criminal Procedure

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

Article 37. Types of criminal prosecution

"37.1. Depending on the nature and degree of severity of the offence, a criminal prosecution shall be carried out in the form of private, semi-public or public prosecution in accordance with the provisions of this Code.

37.2. A private criminal prosecution may only be carried out on the basis a complaint by the victim with respect to offences under Articles 147, 148, 165.1 and 166.1 of the Criminal Code of the Republic of Azerbaijan ...

37.3. A semi-public criminal prosecution shall be carried out on the basis of a complaint by the victim or by the prosecutor ... with respect to offences under Articles 127, 128, 129.2, 130.2, 131.1, 133, 134, 142.1, 149.1, 150.1, 151, 156-158, 163, 169-1, 175-177.1, 178.1, 179.1, 184.1, 186.1, 187.1, 190.1, 197 and 201.1 of the Criminal Code of the Republic of Azerbaijan.

...

37.6. A public criminal prosecution shall be carried out with respect to other offences not covered by Articles 37.2 and 37.3 of this Code."

C. Code of Administrative Offences 2000 ("the old CAO")

51. The relevant provisions of the old CAO (repealed and replaced by a new Code, which entered into force on 1 March 2016) provided as follows at the material time:

Article 187-2. Breach of rules and conditions of the special authorisation (licence) in the field of television and radio broadcasting

"A breach of rules and conditions of the special authorisation (licence) in the field of television and radio broadcasting

shall be punishable with respect to officials by a fine in the amount of [AZN 300 to 500], and with respect to legal entities by a fine in the amount of [AZN 1,000 to 2,000]."

THE LAW

I. SCOPE OF THE APPLICATION

52. The Court observes that on 26 August 2015 the respondent Government were given notice of the application which concerned the applicant's complaints under Article 5, Article 6 § 2, Article 10 and Article 18 of the Convention. As regards the complaint under Article 6 § 2, in her original application the applicant complained of a breach of her right to the presumption of innocence because of the domestic courts' decisions of 5 and 11 December 2014 and the statement made by the Prosecutor General's Office on 6 December 2014. In her observations after notice of the application was given to the respondent Government the applicant raised additional complaints, alleging under Article 6 § 2 that the domestic courts' detention orders of 27 January, 6 March and 15 May 2015 had also breached her right to the presumption of innocence. She raised new complaints under Article 13 of a lack of effective remedies and under Article 14 of discrimination on the grounds of her political views.

53. The Court reiterates that, as a general rule, it does not examine any new matters raised after the Government have been given notice of the application, unless the new matters are an elaboration on the applicant's original complaints to the Court (see *Ilgar Mammadov v. Azerbaijan*, no. 15172/13, § 78, 22 May 2014). Because the applicant may subsequently elucidate or elaborate upon his or her initial submissions, the Court must take into account not only the application form but the entirety of his or her submissions in the course of the proceedings before it which may eliminate any initial omissions or obscurities (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 122 and 129, 20 March 2018).

54. In the present case the Court notes that the applicant's new complaints are not an elaboration of her original complaints, on which the parties have commented, but constitute new matters which were not covered in the original application sent to the Government. The Court does not therefore find it appropriate to examine these complaints in the present context (see *Seleznev v. Russia*, no. 15591/03, § 56, 26 June 2008 and compare *Ilgar Mammadov*, cited above, § 78-79). The applicant had the opportunity to lodge new applications in respect of any other complaints

relating to the subsequent events in her case in accordance with the requirements set out in Rule 47 of the Rules of Court.

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

55. Relying on Article 5 §§ 1 and 3 of the Convention, the applicant complained that her arrest and detention had not been based on a reasonable suspicion that she had committed a criminal offence, and that the domestic courts had failed to provide relevant and sufficient reasons justifying the need for her continued detention. Article 5 §§ 1 (c) and 3 of the Convention reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

57. The applicant submitted that the prosecuting authorities and domestic courts had failed to make genuine enquiries into the basic facts of the case to verify if the allegations against her had been well-founded. She argued that that the charges brought against her had not been supported by any material.

58. In particular, as regards the charge of "incitement to suicide", the authorities had failed to demonstrate that the applicant had used threats or humiliated T.M., which was one of the constituent elements of this crime. The applicant's arguments that she had not seen T.M. since 9 March 2014 and that T.M. had had a history of mental disorders and attempted suicide in the past had all been ignored by the domestic courts. Furthermore, this accusation had not been supported by any evidence, as T.M. had admitted following the applicant's arrest that he had been coerced by the authorities into providing false evidence against her. The fact that there had been no reasonable suspicion that the applicant had committed this crime was also confirmed by the fact that she had been acquitted by the trial court of this charge.

59. With respect to the criminal charge of illegal entrepreneurship, the applicant submitted that this charge had only been based on her alleged lack of accreditation and Azadliq Radio's lack of a broadcasting licence, which had not constituted *per se* a crime under domestic law at the material time. Furthermore, even assuming that there had been a regulatory breach, this should have been the administrative responsibility of RFE/RL or the US agency that governed its broadcast, and not the criminal responsibility of any of the journalists working for Azadliq Radio, including herself.

60. With respect to the charge of embezzlement, the applicant submitted that there had been no information or evidence supporting the authorities' version of events. In particular, there had been no basis to back up the allegation that she had illegally employed staff to work for Azadliq Radio. In support of her submissions, she provided a copy of the service contract signed between a journalist, J.E., and RFE/RL. It could be seen from this contract that it had been signed on behalf of RFE/RL by E.P., acting as its official representative in Azerbaijan and concluded on 1 October 2009, when the applicant had already been head of the Baku bureau.

61. As to the charges of tax evasion and abuse of power, the applicant submitted that they had simply been incomprehensible and had lacked any factual basis.

62. The applicant further argued that the domestic courts had failed to provide "relevant and sufficient" reasons justifying her pre-trial detention. She also complained that the decision of the Baku Court for Serious Crimes of 24 July 2015 had been unlawful as it had failed to set a time-limit or rely on any grounds justifying her detention pending trial.

(b) The Government

63. The Government submitted that the applicant's arrest and detention had been based on a reasonable suspicion that she had committed criminal offences. In particular, they stressed that there had not been "any government actions" behind the applicant's arrest, and that she had been arrested on suspicion of having committed the criminal offence of

"incitement to suicide" following a complaint lodged by a private individual. According to the Government, this accusation was supported "by the initial evidence, including the statements of the victim and other witnesses". As regards the charges against the applicant in relation to illegal entrepreneurship, embezzlement, tax evasion and abuse of power, the Government noted that "those facts had been revealed within the investigation of a criminal case connected with the allegedly illegal activities of some non-commercial organisations, including the one the applicant had worked for".

64. The Government further indicated that the applicant's detention had been justified and that the domestic courts had given sufficient and relevant reasons for her detention.

(c) Third parties

65. The observations submitted by the Council of Europe Commissioner for Human Rights concerned the situation of human rights defenders, journalists and civil society activists in Azerbaijan which, according to the Commissioner, had amounted to "a clear pattern of repression against those expressing dissent or criticism of the authorities". Those comments were to a large extent similar to those made in *Rasul Jafarov v. Azerbaijan* (no. 69981/14, §§ 99-113, 17 March 2016).

66. The two intervening organisations also expressed their concern as regards the alleged ongoing crackdown on civil society in Azerbaijan. With reference to various international reports and the arrests of various well-known individuals, the interveners were of the view that the present case was a perfect example of a systematic practice of arbitrary detention and selective criminal prosecution of journalists, human rights defenders and others in Azerbaijan in retaliation for their exercise of the right to freedom of expression, assembly and association and their cooperation with international organisations.

2. The Court's assessment

67. The Court will examine the applicant's complaints on the basis of the relevant general principles set out, in particular, in the case of *Ilgar Mammadov* (cited above, § 87-90 respectively). The requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. As a general rule, problems concerning the existence of a "reasonable suspicion" arise at the level of the facts. The very specific context of the present case calls for a high level of scrutiny of the facts. The Court's task is to verify whether there existed sufficient objective elements that could lead an objective observer to reasonably believe that the applicant might have committed the acts alleged by the prosecuting authorities (ibid., § 94). Besides, the Court

has to have regard to all the relevant circumstances in order to be satisfied that objective information existed showing that the suspicion against the applicants was "reasonable". In this connection, at the outset, the Court considers it necessary to have regard to the general context of the facts of this particular case (see *Rasul Jafarov* cited above, § 120).

68. The Court observes that the applicant's arrest and pre-trial detention were based on charges relating to two separate sets of facts: the first set formed the basis for the charge of incitement to suicide, while the second concerned various charges in relation to the applicant's work at Azadliq Radio. In order to assess the existence of a "reasonable suspicion" for the applicant's arrest and detention, the Court will proceed to examine the facts giving rise to the above charges in turn.

(a) As regards the charge of incitement to suicide

69. The Court observes that between 5 December 2014 and 6 March 2015 the applicant was detained solely on the basis of the charge of incitement to suicide. In her submissions she disputed the prosecution's version of events in relation to this charge. However, the Court notes that it does not need to determine the veracity of each and every allegation made by the applicant, as the main question before the Court is whether T.M.'s complaint could have formed the basis for a reasonable suspicion against her, regard being had to the allegation that the impugned charge had been brought as a result of coercion on the complainant by the authorities.

(i) *As to the allegation that T.M.'s complaint was obtained under coercion*

70. The Court observes that the applicant, relying on T.M.'s public statements, argued that his complaint had been obtained by the authorities under coercion. The Government, without specifically commenting on this allegation, submitted that the applicant had been arrested following a complaint lodged by a private individual. In this context, the Court observes at the outset that the crime of incitement to suicide is subject to public prosecution and that a complaint lodged by the victim is therefore not a prerequisite to instituting criminal proceedings into this criminal offence (see paragraph 50 above). This is also confirmed in the present case by the fact that the investigating authorities had opened a criminal investigation in connection with T.M.'s attempt to commit suicide following the incident and before he lodged a formal complaint implicating the applicant (see paragraph 17 above). Therefore, the Court will have regard to the investigative measures carried out and the evidence collected by the prosecuting authorities following T.M.'s attempt to commit suicide.

71. In this connection, the Court observes that despite the Court's specific request for all documents relating to the criminal proceedings against the applicant to be submitted, no documents were provided by the

Government demonstrating that any investigative measures had been carried out following the institution of criminal proceedings into the incident, in particular, in the period between 24 October and 25 November 2014 (compare *Zayidov v. Azerbaijan*, no. 11948/08, § 44, 20 February 2014). It also remains unclear whether T.M. was questioned by the authorities as regards the reasons for his suicide attempt since no records of his questioning have been made available by the Government. As regards the period after T.M. lodged a formal complaint against the applicant, it has not been demonstrated that the prosecuting authorities took any measures in order to confirm or dispel the suspicion against the applicant which allegedly provided the grounds for her arrest and continued detention. Notably, no evidence was shown to exist which corroborated the alleged suspicion that the applicant had subjected T.M. to "regular humiliation on social networks and among their acquaintances" and had therefore incited him to commit suicide.

72. The Court has further regard to the fact that no official inquiry or explanation by the prosecuting authorities followed after T.M. publicly stated that he had been subjected to pressure because of his intention to withdraw his complaint (see paragraphs 28-31 above). Even after T.M. explicitly stated later on that he had been forced to submit false evidence against the applicant (see paragraph 32 above), no inquiry was carried out by the authorities to verify those allegations.

73. Lastly, the Court notes that despite the fact that T.M.'s allegations concerning his coercion by the authorities were sufficiently detailed and consistent throughout the relevant period, the Government did not provide any explanations or comments to the Court to that end.

74. Thus, in the light of the specific context of the present case and having regard, in particular, to T.M.'s public statements and the Government's silence in the face of the seriousness of the allegations made, the Court has no choice but to accept that T.M. was coerced by the authorities to make a false claim which implicated the applicant and led to her being charged with the crime in question.

(ii) *As to the existence of a reasonable suspicion against the applicant*

75. The Courts notes at the outset that the applicant argued that the lack of reasonable suspicion that she had committed this crime was also confirmed by the fact that she was later acquitted by the trial court of this charge. In this connection, the Court reiterates that in order for an arrest on reasonable suspicion to be justified under Article 5 § 1 (c) it is not necessary for the police to have obtained sufficient evidence to bring charges, either at the point of arrest or while the applicant is in custody. Nor is it necessary that the person detained should ultimately have been charged or taken before a court. The object of detention for questioning is to further a criminal investigation by confirming or dispelling the suspicions which

provide the grounds for the detention. Thus, facts which raise a suspicion need not be of the same level as those necessary to justify a conviction or even the bringing of a charge, which comes at the next stage of the process of criminal investigation (see *Ilgar Mammadov*, cited above, § 87).

76. Therefore, the Court notes that the fact that information which formed the basis for a reasonable suspicion to justify an individual's arrest or continued detention is deemed insufficient or unreliable at a later stage of the proceedings cannot retrospectively nullify the "reasonableness" of the suspicion which objectively existed and persisted at the material time. However, the situation in the present case is different. As the Court has found above, the applicant's arrest and continued detention was based on a false claim made as a result of coercion. In such circumstances, it cannot be said there existed objective elements to justify a "reasonable suspicion" that the facts at issue had actually occurred (see *Włoch v. Poland*, no. 27785/95, § 108, ECHR 2000-XI). Accordingly, the Court finds that T.M.'s complaint could not have justified the "reasonableness" of the suspicion on which the applicant's arrest and detention was based.

77. As regards other evidence, including statements of witnesses, as referred to by the Government (see paragraph 63 above), the Court observes that this unspecified evidence did not appear in the official documents of the prosecuting authorities or domestic courts concerning the applicant's pre-trial detention (see *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, § 105, 7 June 2018 and *Ilgar Mammadov*, cited above, § 96, and compare *Tanrıkulu and Others v. Turkey*, nos. 29918/96 and 2 others, § 30, 6 October 2005). Nor did the Government present such material before this Court (see *Lazoroski v. the former Yugoslav Republic of Macedonia*, no. 4922/04, § 48, 8 October 2009 and compare *Merabishvili v. Georgia* [GC], no. 72508/13, § 187, ECHR 2017 (extracts)).

78. Lastly, the Court notes that the applicant's complaints at the domestic level concerning the lack of any objective evidence in support of this accusation were completely ignored by the courts. In this regard, the Court points out that, in accordance with a decision of the Plenum of the Supreme Court of 3 November 2009, domestic courts were required to subject prosecuting authorities' applications for remand in custody to close scrutiny and verify the existence of a suspicion against the accused by making use of their power under Article 447.5 of the CCrP to request and review the "initial evidence" in the prosecution's possession. However, it appears that this was not done in the present case (compare *Rashad Hasanov and Others* and *Ilgar Mammadov*, both cited above, § 105 and § 97 respectively).

79. Having regard to the above, the Court finds that there is nothing in the material before it that would satisfy an objective observer at the relevant time that the applicant may have committed the criminal offence of incitement to suicide. The Court therefore concludes that the applicant's

arrest and pre-trial detention were not based on a "reasonable suspicion" of her having committed this crime.

(b) As regards the charges related to the applicant's work at Azadliq Radio

80. The Court observes that on 13 February 2015 the applicant was charged with additional criminal offences under Articles 179.3.2 (high-level embezzlement), 192.2.2 (illegal entrepreneurship), 213.1 (large-scale tax evasion) and 308.2 (aggravated abuse of power) of the Criminal Code. In this context, the Court finds striking similarities between the present case and the cases of *Rasul Jafarov* and *Mammadli* (both cited above) where the applicants, well-known NGO activists, were charged with exactly the same criminal offences, but in relation to their NGO activities, while the charges against the applicant in the present case mainly related to her activities as head of the Baku bureau of Azadliq Radio. In fact, the Government themselves acknowledged that these charges related to facts which had been revealed within the framework of another criminal case opened into "alleged illegal activities of some non-commercial organisations".

81. Notably, as far as the charges of illegal entrepreneurship and large-scale tax evasion are concerned, in the cases cited above, all the misconduct attributed to the applicants essentially stemmed from the fact that they had operated an NGO lacking State registration and had failed to register the grants received, which as a result had corrupted its purpose, being characterised as a *de facto* commercial activity (ibid., § 122 and § 57 respectively). In the present case, the offences with which the applicant was charged stemmed from the fact that she allegedly continued the broadcasting services of Azadliq Radio without the required State licence and exercised journalistic activities without having the necessary accreditation from the relevant authorities. In the prosecuting authorities' view, such failures resulted in the applicant being involved in a *de facto* commercial activity for which she had failed to pay profit tax. The Court, for its part, finds that the manner the prosecuting authorities construed the relevant facts was not sustainable for the following reasons. Firstly, the prosecution did not demonstrate why the applicant, as an employee of RFE/RL or as the head of its Baku bureau, had to bear individual criminal responsibility for the alleged failure of RFE/RL to carry out its broadcasting services without the required licence. Secondly, the Court notes that the Government failed to refer to any provisions of domestic law which criminalised the alleged irregularities in question, namely, the lack of a radio broadcasting licence and lack of accreditation of a foreign journalist. For example, the Court observes that a breach of licensing rules in the field of television and radio broadcasting was punishable by an administrative fine (see paragraph 51 above). Lastly and most importantly, the Court notes that domestic law provided clear definitions of commercial and non-commercial activities, with the differentiating factor being whether or

not the purpose of the activities was to generate profit. Non-commercial activity was not subject to profit tax or value-added tax (see *Rasul Jafarov*, cited above, § 126). As in the case of non-registered grants (ibid., 128), it has not been demonstrated by the Government that the mere lack of a broadcasting licence or accreditation could automatically transform an activity of a non-commercial organisation into a commercial one. Apart from the above-mentioned alleged administrative irregularities, the assumption that the applicant's activities were aimed at generating profit was not supported by any other information. In such circumstances, the Court finds that the applicant could not have been reasonably suspected of having committed the criminal offence of "illegal entrepreneurship", because there were no facts, information or evidence showing that she had engaged in commercial activity or the offence of "tax evasion", as in the absence of such commercial activity there could be no taxable profit (ibid., § 130).

82. As regards the charges of embezzlement and abuse of power, the Court observes that the applicant was accused of employing several individuals to work at the Baku bureau of Azadliq Radio on the basis of civil contracts instead of employment contracts. Firstly, the Court notes that there was no evidence showing that those allegedly illegal contracts were signed by the applicant. The Government argued that this allegation was supported by the fact that she had been responsible for recruiting and managing staff in accordance with her employment contract. However, the applicant submitted a copy of a service contract between RFE/RL and a freelance journalist concluded at the time she was head of the Baku bureau. This contract was not signed by the applicant herself, but rather by an official representative of RFE/RL in Azerbaijan, who had actually also signed one of the employment contracts concluded with the applicant (see paragraph 9 above). The authenticity of this document was not disputed by the Government. Accordingly, the Court finds that the above information alone, as relied on by the Government, is not sufficient to reasonably suspect that the applicant illegally recruited staff to work at the Baku bureau of Azadliq Radio and therefore was engaged in embezzlement or abuse of power.

(c) Conclusion

83. Having regard to the above considerations and the Court's case-law on the matter, the Court finds that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest and continued detention. The Court therefore concludes that the applicant was deprived of her liberty in the absence of a "reasonable suspicion" of her having committed a criminal offence.

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

85. In the light of the above findings the Court does not consider it necessary to examine separately whether the reasons given by the domestic courts for the applicant's continued detention were based on "relevant and sufficient" grounds, as required by Article 5 § 3 of the Convention (see *Rasul Jafarov*, cited above, § 135).

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

86. Relying on Articles 5 and 6 of the Convention, the applicant complained that she had not had enough time and facilities to challenge the lawfulness of her detention, and that the domestic courts ordering her detention had not been independent and impartial. She further complained that the authorities had failed to conduct an effective review of the lawfulness of her detention and to provide reasons for their decisions.

87. The Court notes that the applicant's complaints falls to be examined under Article 5 § 4 of the Convention alone, this provision being *lex specialis* in this field. It provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

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

B. Merits

1. The parties' submissions

89. The applicant maintained her complaint.

90. The Government argued that the applicant and her lawyers had been heard by the domestic judges and had been able to put questions to the prosecuting authorities during the court hearings. Nothing in the case file indicated that the proceedings had not been adversarial or had otherwise been unfair.

2. The Court's assessment

91. The Court notes that it has already found a violation of Article 5 § 4 of the Convention in similar circumstances in a number of cases against

Azerbaijan (see, for example, *Ilgar Mammadov* and *Rasul Jafarov* both cited above, § 118 and § 143 respectively). As in those cases, the domestic courts in the present case systematically failed to verify the existence of a reasonable suspicion underpinning the applicant's arrest and detention despite her repeated complaints to this end and, by using vague and standard wording, automatically endorsed the prosecution's applications without any genuine and independent review of the "lawfulness" of her detention. Having regard to its well-established case-law on the matter, the Court finds that the above considerations are sufficient to conclude that the applicant was not afforded a proper judicial review of the lawfulness of her detention. Accordingly, there has been a violation of Article 5 § 4 of the Convention.

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

92. The applicant complained under Article 6 § 2 of the Convention that the decisions of the domestic courts extending her detention and the statement made by the Prosecutor General's Office had infringed her right to the presumption of innocence. Article 6 § 2 of the Convention provides as follows:

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

A. Admissibility

93. The Government submitted that the applicant had not exhausted domestic remedies. Referring to her appeals against the detention orders, they argued that she had failed to raise the issue of the alleged violation of her rights under Article 6 § 2 before the domestic courts.

94. The applicant disagreed with the Government and argued that she had exhausted domestic remedies and that, even assuming that this was not the case, the Government had not demonstrated that there had been an effective remedy capable of providing redress in respect of her complaints.

95. In so far as the applicant complained of a breach of her right to the presumption of innocence by the domestic courts in their decisions of 5 and 11 December 2014 ordering and extending her pre-trial detention, the Court, having carefully examined both the original texts of the relevant decisions and their English translations procured by and relied on the applicant, finds that none of them contain any wording that could be interpreted as prematurely declaring the applicant guilty of the offences with which she was charged (see *Farhad Aliyev v. Azerbaijan*, no. 37138/06, § 213, 9 November 2010; *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 143, 6 December 2011; and *Muradverdiyev v. Azerbaijan*, no. 16966/06, § 96, 9 December 2010). It follows that this part of the complaint is manifestly

ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

96. As to the remainder of the applicant's complaint concerning the statement made by the Prosecutor General's Office and the Government's objection of a failure to exhaust domestic remedies in this context, the Court reiterates that it is incumbent on the Government claiming non-exhaustion to convince the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say, that it was accessible, was capable of providing redress directly in respect of the applicant's complaints and offered reasonable prospects of success (see *Mooren v. Germany* [GC], no. 11364/03, § 118, 9 July 2009).

97. Turning to the present case, the Court notes that the Government did not refer to any specific provisions of domestic law or provide examples from domestic practice showing that the remedy referred to by them was available and effective in theory and in practice. Notably, they did not demonstrate that the domestic courts called upon to examine the lawfulness of the applicant's pre-trial detention were able to provide appropriate redress in respect of the complaint of a breach of the presumption of innocence by the public statement of the Prosecutor General's Office (compare *Huseyn and Others v. Azerbaijan*, nos. 35485/05 and 3 others, § 221, 26 July 2011).

98. Accordingly, the Court dismisses the Government's objection and notes further that this complaint is not otherwise manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

99. The applicant maintained her complaint and argued that the impugned statement had amounted to a declaration of her guilt before she had been proved guilty according to law.

100. The Government submitted that the statement made by the Prosecutor General's Office had had the aim of informing the public about the status of the criminal investigation and had not breached the applicant's right to the presumption of innocence. They stressed that the statement had not depicted her as a criminal, but had rather indicated that there were reasonable grounds to suspect her of committing the acts described in the statement.

101. The Court points out that it has already found a breach of Article 6 § 2 of the Convention in a number of cases against the respondent State on account of the choice of words used by the authorities in their statements to the press which prejudged the assessment of the facts by the courts and encouraged the public to believe that the persons charged were guilty before

they had been proved guilty according to law (see *Ilgar Mammadov*, § 127; *Muradverdiyev*, §§ 107-08; and *Farhad Aliyev*, § 225, all cited above).

102. The same considerations apply in the circumstances of the present case, given the similar choice of words used by the Prosecutor's General's Office in its statement, which had been found by the Court in the above-cited cases to be problematic from the standpoint of Article 6 § 2. Specifically, the title of the impugned statement in the present case indicated that the applicant's "illegal acts had been unmasked", which amounted to a clear declaration of her guilt (see paragraph 47 above). Furthermore, it was noted in the text that "the investigation ha[d] established that T.M. attempted to commit suicide as a result of threats and pressure used by the applicant". The Court would stress in this regard that a fundamental distinction must be made between a statement that someone is merely suspected of having committed a crime and a clear declaration, in the absence of a final conviction, that an individual has committed the crime in question (see *Farhad Aliyev*, § 218).

103. The Court takes note of the Government's submission that the purpose of the impugned statement was to inform the public about the status of the criminal investigation against the applicant and accepts that the fact that the applicant is a well-known journalist required the authorities to keep the public informed of the applicant's arrest and the ensuing criminal proceedings. However, this duty to inform the public cannot justify all possible choices of words, but has to be carried out with a view to respecting the right of the suspects to be presumed innocent (see *Peša v. Croatia*, no. 40523/08, § 142, 8 April 2010). As regards the fact that the statement ended by referring to the existence of a "reasonable suspicion" to charge the applicant, as highlighted by the Government, the Court notes that this wording was negated by the title of the statement and the remark mentioned above, which represented as an established fact, without any qualification or reservation, the applicant's involvement in the commission of that crime (see, *mutatis mutandis, Ilgar Mammadov*, cited above, § 127). Moreover, the reference to the existence of a suspicion against the applicant was placed at the end of the statement, that is, when the reader may have already formed the view that the applicant had committed a crime. Thus, the overall manner in which the statement was presented left no doubt for the external reader that the applicant had committed the crime with which she was charged. Accordingly, the Court finds that the statement must have led the public to believe that the applicant was guilty before she had been proved guilty according to law.

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

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

105. The applicant complained under Article 18 of the Convention that her right to liberty had been restricted for purposes other than those prescribed in the Convention. Article 18 provides:

> "The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed."

A. Admissibility

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

B. Merits

1. The parties' submissions

107. The applicant argued that, as in the case of *Ilgar Mammadov* (cited above), the specific circumstances of her case demonstrated that her arrest and pre-trial detention had been intended to punish and silence her as an investigative journalist and outspoken critic of the Azerbaijani government. She had published a number of well-researched articles revealing the government's involvement in corruption and which had been widely disseminated around the world. When she had refused to stop work despite the threats she had received, the authorities had arrested and detained her on charges which had lacked any factual basis.

108. The Government, relying on *Khodorkovskiy v. Russia* (no. 5829/04, 31 May 2011) and *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, 25 July 2013), submitted that the restrictions imposed by the State in the present case had not been applied for any purpose other than that provided for by Article 5 and strictly for the proper investigation of the serious criminal offences allegedly committed by the applicant.

109. Submissions by the third parties, which pertain to the complaints under both Articles 5 and 18 of the Convention, are referred to in paragraphs 66 and 67 above.

2. The Court's assessment

110. The Court will examine the applicant's complaint in the light of the relevant general principles set out by the Grand Chamber in its judgments in

Merabishvili, cited above, §§ 287-317) and *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 Others, §§ 164-165, 15 November 2018).

111. Turning to the present case, the Court notes at the outset that it has already found that the applicant's arrest and pre-trial detention were not carried out for the purpose prescribed by Article 5 § 1 (c) of the Convention as the charges against her were not based on a "reasonable suspicion" within the meaning of that provision. Therefore, no issue arises in the present case with respect to the plurality of purposes where a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention (compare *Merabishvili*, cited above, §§ 318-54).

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

113. The Court points out that in the case of *Aliyev* (cited above, §223) it found that its judgments in a series of similar cases involving the respondent State reflected a pattern of arbitrary arrest and detention of government critics, civil society activists and human rights defenders through retaliatory prosecutions and misuse of criminal law, in breach of Article 18.

114. For the reasons set out below the Court finds that the present case constitutes a part of this pattern since the combination of the relevant case-specific facts in the applicant's case is similar to the previous cases, where proof of an ulterior purpose derived from the lack of a reasonable suspicion being viewed against the contextual factors.

115. Firstly, as regards the applicant's status, the Court notes that it is not disputed between the parties that she is a well-known investigative journalist who published a number of articles criticising members of the government and their families for alleged corruption and illegal business activities (see *Khadija Ismayilova v. Azerbaijan*, nos. 65286/13 and 57270/14, §§ 6-7 and §§ 162-164, 10 January 2019).

116. Secondly, the Court takes note of the fact that the applicant was initially arrested and detained based on a false claim made as a result of coercion (see paragraph 76 above). Furthermore, the chain of the events indicates that later on, when it became apparent that that the prosecuting authorities' actions were about to be exposed, the latter charged the applicant with additional crimes.

117. Thirdly, the Court notes that the applicant's arrest was accompanied by stigmatising statements made by public officials. The Court has particular regard to the statement made by the then head of the Presidential Administration two days before her arrest, which accused her of

spreading lies about members of the government. According to the author, this was "tantamount to working for the foreign secret services" and to "treason" (see paragraph 15 above).

118. Fourthly, the applicant's situation cannot be viewed in isolation. Several notable human rights defenders and civil society activists have been arrested and charged to large extent with similar criminal offences in relation to the "alleged illegal activities of some non-commercial organisations" (see paragraph 80 cited above).

119. Thus, the totality of the above circumstances indicates that the authorities' actions were driven by improper reasons and that the actual purpose of the impugned measures was to silence and to punish the applicant for her journalistic activities. In the light of these considerations, the Court finds that the restriction of the applicant's liberty was imposed for a purpose other than that prescribed by Article 5 § 1 (c) of the Convention.

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

VI. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

121. The applicant further complained under Article 10 that her right to freedom of expression had been violated on account of her arrest, pre-trial detention and prosecution. Article 10 of the Convention provides:

> "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."

A. The parties' submissions

122. The Government, referring to the applicant's appeals against the domestic courts' decisions concerning her pre-trial detention, argued that she had failed to raise the issue of the alleged violation of her right under Article 10 of the Convention before the domestic courts and that the complaint should be therefore declared inadmissible for non-exhaustion of domestic remedies.

123. The applicant contested the Government's argument and submitted that she had raised this issue in her applications before the domestic courts.

B. The Court's assessment

124. The Court notes that it already found a violation of Article 10 as a result of the respondent State's failure to comply with its positive obligations to protect the applicant in exercise of her freedom of expression, noting also in that case her role as a well-known investigative journalist (see *Khadija Ismayilova*, cited above, §§ 158-166). In the present case having regard to its findings under Article 5 §§ 1 and 4 and Article 18 of the Convention with regard to the same set of facts, the Court considers that there is no need to give a separate ruling on the admissibility and the merits of the applicant's complaint under Article 10 of the Convention.

VII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

125. 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

126. The applicant claimed 17,208.53 euros (EUR) in respect of pecuniary damage for the loss of her actual and future income. In support of her submissions, the applicant provided copies of her employment contracts and a summary of the salaries paid to her. The applicant further claimed EUR 50,000 in respect of non-pecuniary damage for the mental suffering caused by her arbitrary detention.

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

128. The Court accepts that the applicant suffered pecuniary and non-pecuniary damage as a result of the violations found (see *Rasul Jafarov*, cited above, § 193). However, it cannot speculate on the exact amount of salary and the benefits which she would have received if the violations of the Convention had not occurred (see *Baka v. Hungary* [GC], no. 20261/12, § 191, 23 June 2016). Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 20,000 in respect of both pecuniary and non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

129. As regards the domestic proceedings, the applicant claimed EUR 136.60 (or AZN 250) for legal fees, which was supported by the

relevant invoices. She claimed a further EUR 830.52 for the travel expenses incurred by her lawyers, without providing any documents in support of this part of the claim.

130. As regards the proceedings before the Court, the applicant did not make any claim with respect to legal fees, indicating that she was represented by her lawyers on a *pro bono* basis. At the same time, the applicant claimed 18,908.74 pounds sterling (GBP) (or EUR 24,414.29) for translations costs incurred in relation to the proceedings before the Court. These costs were supported by invoices produced between May 2015 and March 2016 by a translation company based in London. While the invoices did not specify the documents translated, they indicated the number of words translated at a rate of GBP 0.15 per word. According to the applicant, the translations costs were necessary due, in particular, to a large number of documents produced by the Government after notice of the case was given.

131. With respect to costs incurred at the domestic level, the Government submitted in reply that the applicant's lawyers' travel costs were not supported by any evidence.

132. With respect to the translation costs, they submitted that the amount claimed had not been necessarily incurred and was excessive.

133. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, as far as the applicant's claims for her lawyers' travels expenses are concerned, the Court notes it has not been shown that these expenses had been actually incurred and rejects the claim in this part.

134. As to the translation costs, the Court does not consider that those incurred before notice of the present case was given were necessary for the proceedings before the Court. As regards the remaining part of the translation costs, namely those incurred after notice of the case was given (GBP 12,384.60), the Court agrees with the Government that the sums claimed appear excessive (compare, for example, *Tagayeva and Others v. Russia*, nos. 26562/07 and 6 others, § 652, 13 April 2017). Accordingly, having regard to the documents in its possession, the Court considers it reasonable to award the total sum of EUR 5,000, plus any tax that may be chargeable on that amount.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 6 § 2 (concerning the statement of the Prosecutor General's Office) and the complaints under Articles 5 and 18 of the Convention admissible, and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention on account of the lack of reasonable suspicion for the applicant's arrest and pre-trial detention;

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

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

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

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

7. *Holds* that there is no need to examine separately the admissibility on the merits of the complaint under Article 10 of the Convention;

8. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent state at the rate applicable at the date of settlement at the rate applicable at the date of settlement:
      (i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Síofra O'Leary
Registrar	President