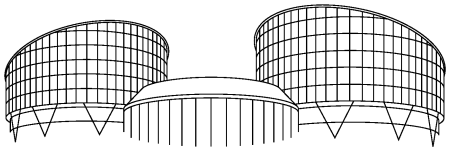

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ISAYEVA v. AZERBAIJAN

(Application no. 36229/11)

JUDGMENT

STRASBOURG

25 June 2015

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 Isayeva v. Azerbaijan,

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

Isabelle Berro, *President*,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 36229/11) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Ms Ofeliya Alik gizi Isayeva (Ofeliya Alik qızı İsayeva - "the applicant"), on 24 May 2011.

2. The applicant was represented by Mr A. Ismayılov, a lawyer practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged that her right to liberty under Article 5 of the Convention had been breached, because she had been detained from 7 April to 4 May 2011 without a court order, and that the judicial decisions ordering and extending her pre-trial detention had lacked reasonable grounds.

4. On 17 February 2014 complaints concerning the lawfulness of the applicant's detention from 7 April to 4 May 2011 and lack of justification for her pre-trial detention were communicated to the Government, and the remainder of the application was declared inadmissible.

5. On 30 July 2014 the Court was informed of the applicant's death on 5 August 2012 and the wish of the applicant's sister, Ms Sevil Rzayeva, to continue the proceedings before the Court in her sister's stead.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1957 and at the time of the events she lived in Baku.

A. Institution of criminal proceedings against the applicant and her remand in custody

7. On 7 April 2009 criminal proceedings were instituted under Article 178 (fraud) of the Criminal Code against the applicant.

8. On 20 August 2009 the criminal proceedings under Article 178 of the Criminal Code were terminated owing to the impossibility of determining the applicant's whereabouts.

9. On 24 August 2009 the applicant was invited to the Sabail District Police Office as a witness in connection with the above-mentioned criminal proceedings. After her arrival at the police office she had a conversation with the investigator which lasted approximately one hour. The applicant was then taken by three police officers to a drug rehabilitation centre, where it was established that she was a drug user.

10. The applicant was then returned to the police office and she was subjected to a body search in the presence of two attesting witnesses (*hal şahidi*) and three police officers. During the search, narcotic substances were found on her person.

11. At 10.10 p.m. on 24 August 2009 the investigator drew up a record of the applicant's arrest (*tutma protokolu*). It appears from the record that the applicant was arrested under Article 234.1 of the Criminal Code on suspicion of illegal possession of narcotic substances in an amount exceeding that necessary for personal use, without intention to sell.

12. On 26 August 2009 the applicant was charged with the criminal offence of possession of narcotic substances in an amount exceeding that necessary for personal use, without intention to sell, as provided in Article 234.1 of the Criminal Code. On the same day the prosecutor requested the judge to apply the preventive measure of remand in custody (*həbs qətimkan tədbiri*) in respect of the applicant.

13. On 26 August 2009 the Sabail District Court, relying on the official charges brought against the applicant and the prosecutor's request for the preventive measure of remand in custody to be applied, ordered the applicant's detention for a period of two months. The judge substantiated the necessity of this measure by the gravity of the applicant's alleged criminal acts and the possibility of her absconding from and obstructing the investigation.

14. The applicant did not appeal against the Sabail District Court's decision of 26 August 2009.

B. Extension of the applicant's detention and her criminal conviction

15. On 21 September 2009 the investigator in charge of the case decided to reinstitute criminal proceedings against the applicant under Article 178 (fraud) of the Criminal Code.

16. On 26 September 2009 the investigator decided to join the two criminal proceedings against the applicant under Articles 178 and 234 of the Criminal Code in the same criminal proceedings.

17. On 22 October 2009 the Sabail District Court extended the applicant's remand in custody by one month, until 24 November 2009. The judge reasoned the need for this extension by citing the possibility that she would abscond from or obstruct the investigation. The relevant part of the decision reads as follows:

> "Taking into account the facts that the detention period of the accused Isayeva Ofeliya Alik gizi will end on 24 October 2009 and that, if released, there are sufficient grounds [to believe that she might] abscond from the investigation and the court, obstruct the normal functioning of the investigation, or prevent the clarification of important facts relating to the criminal inquiry by illegally influencing individuals taking part in the criminal proceedings, I consider it necessary to extend her pre-trial detention for a period of one month, namely until 24 November 2009."

18. The applicant appealed against this decision, alleging that there was no need for an extension of her pre-trial detention and that during the two previous months no investigative steps had been taken by the investigator.

19. On 2 November 2009 the Baku Court of Appeal dismissed her appeal, finding that the detention order was justified. The relevant part of the decision reads as follows:

> "The first-instance court, taking into account the facts that a certain period of time is needed to complete the investigation, and that there are sufficient grounds [to believe that], if released, the accused O. Isayeva might abscond from the investigation and the court, obstruct the normal functioning of the investigation, or prevent the clarification of important facts relating to the criminal inquiry by illegally influencing individuals taking part in the criminal proceedings, took a decision, in line with the law, ordering the extension of her pre-trial detention for a period of one month, namely until 24 November 2009.
>
> Therefore, the appellate court considers that as there were no grounds to quash this decision of the first-instance court, the appeal should be dismissed and the decision should be left unchanged."

20. On 24 November 2009 the prosecutor filed an indictment with the Assize Court.

21. On 10 December 2009 the Assize Court held a preliminary hearing. At that hearing, the court decided, *inter alia*, that the preventive measure of remand in custody should be left "unchanged".

22. On 25 May 2010 the Assize Court convicted the applicant of fraud and illegal possession of narcotic substances and sentenced her to ten years' imprisonment. The applicant appealed against this judgment.

C. Quashing of the applicant's conviction and remittal of the case to the investigation

23. At the preliminary examination of the case before the Baku Court of Appeal, the applicant complained that her defence rights had been violated during the investigation, asking the appellate court to quash the Assize Court's judgment and to remit the case to the first-instance court for a new examination.

24. On 15 July 2010 the Baku Court of Appeal held a preliminary hearing in which it decided to dismiss the applicant's request. The applicant appealed against this decision.

25. On 1 September 2010 the Supreme Court allowed the applicant's appeal, finding that her defence rights had been violated at the investigation stage of the proceedings, and quashed the appellate court's decision of 15 July 2010. In particular, the Supreme Court found that the investigator had failed to inform the applicant, in a language she understood, of the accusations against her, that the applicant had not been given adequate time and facilities for the preparation of her defence, and that the investigator had failed to examine witnesses on behalf of the applicant. On the same day the Supreme Court delivered a special ruling (*xüsusi qərardad*) informing the Ministry of Internal Affairs of the unlawful actions of the investigator in charge of the case.

26. On 2 November 2010 the Baku Court of Appeal quashed the Assize Court's judgment of 25 May 2010 and the Assize Court's decision of 10 December 2009. The appellate court decided to remit the case to the preliminary hearing stage of the proceedings before the first-instance court.

27. On 14 December 2010 the Assize Court held a preliminary hearing. At that hearing the court decided to remit the case to the prosecution authorities for a new investigation, finding that the applicant's defence rights had been violated during the investigation. The court also decided that the applicant's remand in custody should be extended for a period of one month, until 14 January 2011.

D. Extension of the applicant's pre-trial detention and further developments

28. Relying on a request from the Sabail District Prosecutor for an extension of the period of the applicant's detention, on 11 January 2011 the Sabail District Court extended the applicant's pre-trial detention until 29 January 2011. The judge gave as reasons for this measure the seriousness

of the offence and the circumstances of the applicant's alleged criminal acts, as well as the facts of the case. The relevant part of the decision reads as follows:

> "Bearing in mind the characteristics of the criminal acts attributed to Isayeva Ofeliya Alik gizi, the fact that these criminal acts are qualified as serious crimes, the conditions of their commission and the particular facts of the case, I consider that in the present case the defence of public interest should prevail over respect for her right to liberty...
>
> It should be taken into consideration that by its decision of 14 December 2010 the Assize Court determined the pre-trial detention period of Isayeva Ofeliya Alik gizi until 14 January 2011. However, as indicated in the provisions of that court decision, a certain period of time was required for completion of the investigation, the accused and her lawyer should be familiarised with the case file, and any possible requests should be examined.

29. The applicant appealed against this decision, claiming that the first-instance court had failed to justify the extension of her detention.

30. On 19 January 2011 the Baku Court of Appeal upheld the Sabail District Court's decision of 11 January 2011. As regards the justification, the wording of the appellate court's decision was similar to that of the first-instance court's decision.

31. On 25 January 2011 the Sabail District Court examined the prosecutor's request for the extension of the applicant's detention period. At the hearing, the applicant's lawyer asked the judge to dismiss the prosecutor's request. He submitted that the applicant had a permanent place of residence, that there was no risk of her absconding, and that she had been unlawfully detained for more than one year and six months. On the same day the judge extended the applicant's remand in custody by one month, until 29 February 2011. He substantiated the necessity of the extension of the applicant's detention as follows:

> "While examining the [the prosecutor's] request and the materials of the case file, I consider that a decision ordering the extension of the detention period of the accused Isayeva Ofeliya Alik gizi until 29 February 2011 should be taken because the accused Isayeva Ofeliya Alik gizi does not have a permanent place of residence, her detention period will end on 29 January 2011 and the criminal investigation cannot be completed by that date, and, if released, there are sufficient grounds to believe that she might abscond from the investigation."

32. The applicant appealed against this decision, reiterating her previous complaints.

33. On 4 February 2011 the Baku Court of Appeal upheld the first-instance court's decision ordering the applicant's detention for a period of one month, holding that this period should be calculated until 28 February and not until 29 February 2011.

34. On 23 February 2011 the Sabail District Court again decided to extend the applicant's detention, until 15 March 2011. The judge justified the need for the extension of the applicant's detention as follows:

> "Taking into account that the investigation was not completed, that the grounds for the accused's detention have not changed, that she does not have a permanent place of residence in Baku, that the police office is considered to be her place of residence and for this reason she might abscond from the investigation if released, as well as the seriousness of the offences attributed to her and the volume and complexity of the case, I consider that the request should be granted in part and the extension of the detention for a period of fifteen days should be considered lawful, reasonable and fair."

35. The applicant appealed against this decision, arguing that the first-instance court had failed to justify her continued detention.

36. On 3 March 2011 the Baku Court of Appeal upheld the first-instance court's extension order. The relevant part of the decision reads as follows:

> "Therefore, bearing in mind that the investigation of the case was at the final stage, that the grounds for the application of the preventive measure of remand in custody have not changed, that she was accused of a serious crime, that she does not have a permanent place of residence and there is a likelihood of her absconding from the investigation, as well as the seriousness of the offence attributed to her, the panel of the court concludes that the first-instance court has been correct in extending the detention period of the accused Isayeva Ofeliya Alik gizi."

37. On 10 March 2011 the Sabail District Court decided to extend the applicant's detention until 28 March 2011. The court gave as the reason for its decision that it needed more time to complete the investigation. The relevant part of the decision reads as follows:

> "As all the investigative actions have now been completed, it was necessary to announce the end of the investigation to the accused and the victims. However, because of the workload of some of the participants in the criminal proceedings, it was not possible to carry out investigative actions with the accused.
>
> As the participation of all the parties is now possible, the investigation of the case should be completed, the accused and the victims should be informed of the end of the investigation and they should be familiarised with the numerous pieces of evidence in the criminal case, all of which needed a certain period of time."

38. On 17 March 2011 the Baku Court of Appeal upheld the first-instance court's extension order.

39. In the meantime, on an unspecified date the applicant lodged a request with the Sabail District Court asking the court to replace her remand in custody with the preventive measure of house arrest. She claimed, in particular, that her detention had not been justified and that there was no evidence that she might abscond from the investigation if placed under house arrest. The applicant further submitted that her sister's flat was the place where she would live if placed under house arrest.

40. On 10 March 2011 the Sabail District Court dismissed the request. The judge substantiated the decision as follows:

> "Bearing in mind the characteristics, the seriousness of the offence and the danger to the public of the criminal act attributed to the accused Isayeva Ofeliya Alik gizi, the need to prevent Isayeva Ofeliya Alik gizi from committing unlawful acts, her

> personality, the facts that there are sufficient grounds [to believe that], if released she might abscond from the investigation and prevent the establishment of the truth on the case; also, she has been charged with an offence punishable by more than two years' imprisonment ... I decide that the request ... for replacement of the remand in custody of the accused Isayeva Ofeliya Alik gizi with the preventive measure of house arrest should not be granted."

41. On 17 March 2011 the Baku Court of Appeal dismissed the applicant's appeal, finding that the first-instance court had been correct in refusing to replace her detention with the preventive measure of house arrest.

42. On an unspecified date, the prosecutor asked the court to extend the applicant's detention until 12 April 2011. The prosecutor gave as the reason for the need to extend the detention the attitude of the applicant's lawyer, who had refused to familiarise himself with the material in the case file until 28 March 2011 because it was a public holiday.

43. On 28 March 2011 the Sabail District Court examined the prosecutor's request. At the court hearing, the applicant's lawyer submitted that he was not obliged to familiarise himself with the case file on public holidays, and that his failure to do so could not constitute a ground for extension of the applicant's detention. On the same day, relying on the prosecutor's request, the court decided to extend the applicant's detention on remand for a period of ten days, namely until 7 April 2011. The relevant part of the decision reads as follows:

> "As the [the prosecutor's] present request was justified solely on the basis of the lawyer's failure to familiarise himself with the material in the case file and the lawyer stated that he would begin to familiarise himself with the case file from 28 March 2011 ... the extension of the detention for a period of ten days should be considered appropriate."

44. On 5 April 2011 the Baku Court of Appeal upheld the first-instance court's extension order.

45. On 9 April 2011 the Baku City Deputy Prosecutor filed a bill of indictment with the Baku Assize Court.

46. On 4 May 2011 the Baku Assize Court held a preliminary hearing. At that hearing, the court decided, *inter alia*, that the preventive measure of remand in custody should be left "unchanged".

47. On 28 September 2011 the applicant lodged a request with the Baku Assize Court, asking the court to replace her remand in custody with the preventive measure of house arrest. She claimed, in particular, that there was no evidence that she might abscond from the court, and stated that if placed under house arrest she would live in her sister's flat.

48. On the same day the Baku Assize Court dismissed the applicant's request. The relevant part of the Baku Assize Court's decision of 28 September 2011 reads as follows:

> "After having examined the request in question and having heard the participants in the proceedings, the court, taking into account the characteristics of the criminal acts attributed to the accused and the danger they present to the public, considers that there is no need to replace the preventive measure of remand in custody applied in respect of the accused with another preventive measure; for this reason, the request should be dismissed."

49. On 30 May 2012 the Baku Assize Court convicted the applicant of fraud and illegal possession of narcotic substances and sentenced her to nine years' imprisonment.

50. The applicant appealed against the judgment of 30 May 2012.

51. On 5 August 2012, while her appeal was pending before the Baku Court of Appeal, the applicant died in prison.

52. Following the applicant's death, her sister, Ms Sevil Rzayeva, lodged a request with the Baku Court of Appeal, as the applicant's legal heir, asking the court not to terminate the criminal proceedings.

53. On 13 August 2012 the Baku Court of Appeal decided to continue the examination of the applicant's appeal against the judgment of 30 May 2012. The Court has not been informed of the outcome.

54. By two powers of attorney, dated 9 August 2012 and 8 July 2014, Ms Sevil Rzayeva gave the right to the applicant's representative to represent her before the courts at all levels of jurisdiction. In particular, the power of attorney of 8 July 2014 provided that the applicant's representative was entitled to represent Ms Sevil Rzayeva in all the legal proceedings, including the proceedings before the Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Code of Criminal Procedure ("the CCrP")

55. The relevant provisions of the CCrP concerning pre-trial detention and the application of the preventive measure of remand in custody are described in detail in the Court's judgments in *Farhad Aliyev v. Azerbaijan* (no. 37138/06, §§ 83-102, 9 November 2010), and *Muradverdiyev v. Azerbaijan* (no. 16966/06, §§ 35-49, 9 December 2010).

B. Decisions of the Plenum of the Supreme Court

1. *Decision "on the Application of the Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Case-law of the European Court of Human Rights in the Administration of Justice" of 30 March 2006*

56. The relevant part of this decision reads as follows:

"13 ... the preventive measure of remand in custody must be considered an exceptional measure to be applied in absolutely necessary cases, where the application of another preventive measure is not possible.

14. The courts should take into account that individuals whose right to liberty has been restricted are entitled in accordance with Article 5 § 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms to trial within a reasonable time, as well as to release pending trial if it is not necessary to apply the preventive measure of remand in custody in respect of them."

2. *Decision "on the Practice of the Application of the Legislation by the Courts during the Examination of Requests for the Application of the Preventive Measure of Remand in Custody in Respect of an Accused" of 3 November 2009*

57. The relevant part of this decision reads as follows:

"3. ... when deciding to apply the preventive measure of remand in custody, the courts must not be content merely to list the procedural grounds provided for by Article 155 of the CCrP, but must verify whether each ground is relevant in respect of the accused and whether it is supported by the material in the case file. In so doing, the nature and seriousness of the offence committed by the accused, information about his personality, age, family situation, occupation, health and other circumstances of that kind must be taken into consideration".

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLES 34 AND 37 OF THE CONVENTION

58. The Government submitted that the applicant died on 5 August 2012 and that there was no information as to whether any person would like to continue the examination of the case before the Court as the applicant's heir. The Government submitted that the power of attorney given by the applicant's sister to her representative cannot be considered as evidence in this respect, because it was a general power of attorney and there was no mention of this particular case.

59. The observations submitted in reply to the Government's observations by the applicant's representative contained two powers of attorney, dated 9 August 2012 and 8 July 2014, which gave the representative the right to represent the applicant's sister in all the legal proceedings, including those before the Court. In the observations, the applicant's sister submitted that she wished to pursue the examination of the case before the Court as the applicant's legal heir. She submitted that she had been recognised as the applicant's legal heir before the domestic

authorities and that on the basis of her request the Baku Court of Appeal had decided to pursue the examination of the criminal proceedings against the applicant.

60. The Court observes at the outset that in various cases in which an applicant has died in the course of the Convention proceedings, including cases raising length of pre-trial detention complaints, it has taken into account the statements of the applicant's heirs or of close family members expressing their wish to pursue the application (see, among other authorities, *Jėčius v. Lithuania*, no. 34578/97, § 41, ECHR 2000-IX; *Pisarkiewicz v. Poland*, no. 18967/02, §§ 30-33, 22 January 2008; and *Ergezen v. Turkey*, no. 73359/10, §§ 27-30, 8 April 2014). The Court further notes that it has already found that when an applicant dies during proceedings the sister of the applicant has a legitimate interest which justifies the continuation of the examination of the case (see, for example, *Todev v. Bulgaria*, no. 31036/02, § 20, 22 May 2008). Accordingly, the late applicant's sister, who was also recognised as the applicant's legal heir in the domestic proceedings, has standing to continue the proceedings before the Court in the applicant's stead.

61. As regards the Government's argument that there was no information as to whether any person would like to continue the examination of the case before the Court as the applicant's heir, the Court observes that in the observations submitted in reply to the Government's observations the applicant's sister clearly expressed her wish to continue the examination of the case before the Court and gave the right to the applicant's representative to represent her before the Court.

62. The Court thus considers that the applicant's sister expressed her wish to continue the proceedings before the Court in the applicant's stead and that the Government's objection should be dismissed. However, for reasons of convenience, the text of this judgment will continue to refer to Ms Ofeliya Isayeva as "the applicant", although her sister is today to be regarded as having this status (see *Gulub Atanasov v. Bulgaria*, no. 73281/01, § 42, 6 November 2008).

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

63. The applicant complained under Article 5 § 1 of the Convention that her detention from 7 April to 4 May 2011 had been unlawful. The relevant part of Article 5 § 1 of the Convention reads as follows:

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

A. Admissibility

64. 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

65. The Government did not make any observations on the merits.

66. The applicant reiterated that her detention from 7 April to 4 May 2011 had been unlawful as she had been detained during that period without a court order.

2. The Court's assessment

67. The Court notes that the period of the applicant's pre-trial detention, authorised by the Sabail District Court's detention order of 28 March 2011, expired on 7 April 2011. On 9 April 2011 the investigation was completed and the indictment was sent to the Baku Assize Court. At its preliminary hearing on 4 May 2011 the Baku Assize Court decided that the preventive measure of remand in custody applied in respect of the applicant should remain "unchanged". Accordingly, during the period from 7 April to 4 May 2011 the applicant was detained without any judicial order authorising her detention.

68. In this connection, the Court reiterates that it has found a violation of Article 5 § 1 in a number of cases concerning the practice of holding defendants in custody solely on the basis of the fact that an indictment has been filed with a trial court. It has held that detaining defendants without a specific legal basis or clear rules governing their situation - with the result that they may be deprived of their liberty for an unlimited period without judicial authorisation - is incompatible with the principles of legal certainty and protection from arbitrariness, which are common threads throughout the Convention and the rule of law (see, among other authorities, *Baranowski v. Poland*, no. 28358/95, §§ 53-57, ECHR 2000-III; *Jėčius*, cited above, §§ 60-63; and *Gigolashvili v. Georgia*, no. 18145/05, §§ 33-36, 8 July 2008).

69. The Court further notes that it has already examined a similar complaint in another case against Azerbaijan, in which it concluded that there had been a violation of Article 5 § 1 of the Convention in that the applicant's detention had not been based on a court decision and had therefore been unlawful within the meaning of that provision (see *Farhad Aliyev*, cited above, §§ 174-179, and *Allahverdiyev v. Azerbaijan*,

no. 49192/08, §§ 43-46, 6 March 2014). The Court sees no reason to reach a different conclusion in the present case, and concludes that the applicant's detention from 7 April to 4 May 2011, which was not based on a court order, was unlawful within the meaning of Article 5 § 1.

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

III. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

71. The applicant complained under Article 5 § 3 of the Convention that the domestic courts had failed to justify the need for her detention and had not provided reasons for its continuation. Article 5 § 3 of the Convention provides as follows:

> "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

72. The Government submitted that the complaint concerning the period of the applicant's detention prior to November 2010 should be dismissed because of non-compliance with the six-month rule, as the application was lodged with the Court on 24 May 2011.

73. The Court considers that this objection of the Government concerns the calculation of the period to be taken into consideration when determining the length of detention pending trial under Article 5 § 3 of the Convention. Therefore, it raises issues which are closely related to the merits of the complaint, and the Court joins this objection to the merits of the complaint.

74. Having regard to this, the Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

75. The Government submitted that there had been relevant and sufficient grounds for the applicant's continued detention. In particular, they submitted that the applicant had been suspected of serious criminal offences

and that there had been a risk of absconding. They further pointed out that the domestic authorities had been diligent in the conduct of the proceedings.

76. The applicant maintained her complaint. She submitted, in particular, that the domestic courts had failed to provide relevant and sufficient reasons for her continued detention.

2. The Court's assessment

(a) The period to be taken into consideration

77. The Court reiterates that, when determining the length of detention pending trial under Article 5 § 3 of the Convention, the period to be taken into consideration begins on the day the accused is taken into custody and ends on the day when the charge is determined, even if only by a court of first instance, or, possibly, when the applicant is released from custody pending criminal proceedings against him (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, §§ 145 and 147, ECHR 2000-IV, and *Kalashnikov v. Russia*, no. 47095/99, § 110, ECHR 2002-VI).

78. Furthermore, in view of the essential link between Article 5 § 3 of the Convention and paragraph 1 (c) of that Article, a person convicted at first instance cannot be regarded as being detained "for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence", but is in the position provided for by Article 5 § 1 (a), which authorises deprivation of liberty "after conviction by a competent court" (see *Belevitskiy v. Russia*, no. 72967/01, § 99, 1 March 2007, and *Piotr Baranowski v. Poland*, no. 39742/05, § 99, 2 October 2007).

79. Turning to the circumstances of the present case, the Court observes that in the present case the applicant was arrested on 24 August 2009, and on 25 May 2010 the Assize Court delivered its judgment convicting her. Following the applicant's appeals, on 2 November 2010 the Baku Court of Appeal quashed the Assize Court's judgment of 25 May 2010 and remitted the case to the investigation for a new examination. However, the applicant was not released pending retrial and on 30 May 2012 the Baku Assize Court delivered a judgment convicting her.

80. The Court reiterates in this connection that when assessing the length of pre-trial detention where an applicant is held in custody during investigation and trial and continues to be deprived of his liberty when his conviction is quashed at the appeal stage and the case is remitted to the investigation for new examination, the Court has consistently regarded such multiple periods of pre-trial detention as a whole and has considered that the six-month rule should start to run only from the end of the last period of pre-trial detention (see, among numerous authorities, *Solmaz v. Turkey*, no. 27561/02, §§ 34-37, 16 January 2007, and *Dubinskiy v. Russia*, no. 48929/08, § 55, 3 July 2014). In view of the above, the Court finds that

the Government's objection, that the complaint concerning the period of the applicant's detention prior to November 2010 did not comply with the six-month rule, should be dismissed.

81. Accordingly, in the present case the period to be taken into consideration consisted of two terms: (1) from 24 August 2009, when the applicant was arrested, to 25 May 2010, when she was convicted at first instance by the Assize Court; and (2) from 2 November 2010, when the applicant's conviction was quashed by the Baku Court of Appeal, to 30 May 2012, when she was again convicted by the Baku Assize Court.

82. It follows that the period of the detention to be taken into consideration in the instant case amounted in total to approximately two years and four months.

(b) General principles

83. A person charged with an offence must always be released pending trial unless the State can show that there are "relevant and sufficient" reasons to justify the continued detention (see *Smirnova v. Russia*, nos. 46133/99 and 48183/99, § 58, ECHR 2003-IX (extracts), and *Khodorkovskiy v. Russia*, no. 5829/04, § 182, 31 May 2011). According to the Court's established case-law, the presumption under Article 5 is in favour of release. The second limb of Article 5 § 3 does not give judicial authorities a choice between bringing an accused to trial within a reasonable time and granting him provisional release pending trial. Until conviction he must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continuing detention ceases to be reasonable (see *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-X, and *Bykov v. Russia* [GC], no. 4378/02, § 61, 10 March 2009).

84. The persistence of a reasonable suspicion that the person arrested has committed an offence is *sine qua non* for the lawfulness of the continued detention, but with the lapse of time this no longer suffices and the Court must then establish whether the other grounds given by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also be satisfied that the national authorities have displayed "special diligence" in the conduct of the proceedings (see *Labita*, cited above, § 153).

85. The domestic courts must examine all the arguments for and against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions on applications for release (see *Letellier v. France*, 26 June 1991, § 35, Series A no. 207). Arguments for and against release must not be general or abstract (see *Clooth v. Belgium*, 12 December 1991, § 44, Series A no. 225).

86. The Convention case-law has developed four basic acceptable reasons for detaining a person before judgment when that person is suspected of having committed an offence: the risk that the accused would fail to appear for trial, the risk that the accused, if released, would take action to prejudice the administration of justice, or commit further offences, or cause public disorder (see *Zayidov v. Azerbaijan*, no. 11948/08, § 58, 20 February 2014; *Novruz Ismayilov v. Azerbaijan*, no. 16794/05, § 52, 20 February 2014; and *Allahverdiyev*, cited above, § 54).

87. In this connection, the Court reiterates that, while the severity of the sentence faced is one of the relevant elements in the assessment of the risk of absconding, the gravity of the charges cannot by itself serve to justify long periods of remand in custody (see *Ilijkov v. Bulgaria*, no. 33977/96, §§ 80-81, 26 July 2001). Moreover, the risk of absconding, which may justify detention, cannot be gauged solely on the basis of the severity of the sentence faced. It must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial (see *Panchenko v. Russia*, no. 45100/98, § 105, 8 February 2005, and *Letellier*, cited above, § 43).

(c) Application of these principles to the present case

88. As regards the first period of the applicant's detention, the Court observes that the applicant's detention was ordered for the first time when she was brought before the judge at the Sabail District Court on 26 August 2009. The applicant did not, however, appeal against the Sabail District Court's decision of 26 August 2009. The applicant's detention was subsequently extended for a period of one month by the Sabail District Court's decision of 22 October 2009. That decision was upheld by the Baku Court of Appeal's decision of 2 November 2009.

89. The Court observes that both the Sabail District Court and the Baku Court of Appeal used a standard template when extending the applicant's detention on 22 October and 2 November 2009 respectively. In particular, the Court notes that both the first-instance court and the appellate court limited themselves to repeating a number of grounds for detention in an abstract and stereotyped way, without giving any reasons why they considered those grounds relevant in respect of the applicant (see paragraphs 17 and 19 above).

90. As regards the second period of the applicant's pre-trial detention, the Court observes that following the quashing of the applicant's conviction by the Baku Court of Appeal on 2 November 2010 the applicant was not released pending retrial and her detention was extended on many occasions (see paragraphs 27-48 above). In their decisions, the domestic courts mainly relied on the seriousness of the charges against the applicant, and her risk of absconding from or obstructing the investigation, without indicating why

they considered these grounds relevant in the applicant's case. They failed to mention any case-specific facts relevant to those grounds, and did not substantiate them with relevant and sufficient reasons. The Court also notes that when extending the applicant's detention the courts repeatedly used the same stereotyped formula; their reasoning did not evolve with the passage of time to reflect the developing situation or to ascertain whether these grounds remained valid at the later stages of the proceedings (see *Farhad Aliyev*, cited above, § 191, and *Rafig Aliyev v. Azerbaijan*, no. 45875/06, § 92, 6 December 2011). Moreover, these decisions did not address the arguments put forward by the applicant against the application of the preventive measure of remand in custody or for the replacement of this measure by the preventive measure of house arrest.

91. The Court further observes that the domestic courts also relied on irrelevant grounds when they extended the applicant's pre-trial detention. In particular, they substantiated their decisions by stating that more time was needed to complete the investigation (see paragraph 28 above). However, the Court reiterates that grounds such as the need to carry out further investigative measures or the fact that the proceedings have not yet been completed do not correspond to any of the acceptable reasons for detaining a person pending trial under Article 5 § 3 (see *Piruzyan v. Armenia*, no. 33376/07, § 98, 26 June 2012, and *Allahverdiyev*, cited above, § 60). Moreover, other grounds relied on by the domestic courts, such as the failure to complete the investigation because of the heavy workload of some participants in the investigation, and the failure of the applicant's lawyer to familiarise himself with the case file (see paragraphs 37 and 43 above) could not constitute relevant grounds for extending the pre-trial detention.

92. In view of the foregoing considerations, the Court concludes that, by using a standard formula merely listing the grounds for detention without addressing the specific facts of the applicant's case, as well as relying on irrelevant grounds, the authorities failed to give "relevant" and "sufficient" reasons to justify the need for the applicant's pre-trial detention for more than two years.

93. There has accordingly been a violation of Article 5 § 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. 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

1. Pecuniary damage

95. The applicant claimed 7,840 euros (EUR) in respect of pecuniary damage on account of payment of money to one of the victims in the criminal proceedings.

96. The Government contested the claim, noting that there was no causal link between the alleged violation and pecuniary damage allegedly inflicted.

97. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

2. Non-pecuniary damage

98. The applicant claimed EUR 100,000 in respect of non-pecuniary damage.

99. The Government contested the amount claimed as unsubstantiated and excessive.

100. The Court considers that the applicant has 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 applicant the sum of EUR 13,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

101. The applicant claimed EUR 10,000 for costs and expenses incurred before the domestic courts and the Court. In support of her claim, she submitted a statement from her lawyer.

102. The Government considered that the claim was unsubstantiated and lacked documentary evidence.

103. 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 the applicant was represented before the domestic courts and the Court, and it is undisputed that the representative provided relevant documentation and observations, as requested by the Court. In these circumstances, the Court finds it appropriate to award the applicant EUR 2,500 in respect of costs and expenses (see *Rzakhanov*

v. Azerbaijan, no. 4242/07, § 92, 4 July 2013, and *Novruz Ismayilov*, cited above, § 100).

C. Default interest

104. 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 application admissible;

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

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant's sister, Ms Sevil Rzayeva, 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 Azerbaijani manats at the rate applicable at the date of settlement:
      (i) EUR 13,000 (thirteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant's sister, 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;

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

Done in English, and notified in writing on 25 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President