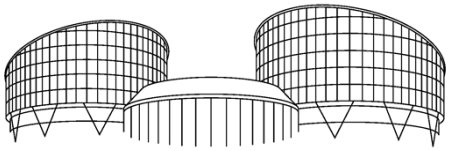

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MAMMADOV AND OTHERS v. AZERBAIJAN

(Application no. 35432/07)

JUDGMENT

STRASBOURG

21 February 2019

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 Mammadov and Others v. Azerbaijan,

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

Angelika Nußberger, *President,*
Yonko Grozev,
André Potocki,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov,
Lado Chanturia, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 8 January 2019,

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

PROCEDURE

1. The case originated in an application (no. 35432/07) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Novruzali Khanmammad oglu Mammadov (*Novruzəli Xanməmməd oğlu Məmmədov* – hereinafter "the first applicant"), on 13 August 2007.

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

3. The first applicant alleged that he had been ill-treated by agents of the Ministry of National Security ("the MNS") and that his right to liberty had been breached.

4. By a letter of 25 August 2009 the Court was informed of the first applicant's death in detention on 17 August 2009 and the wish of his wife, Ms Maryam Mammadova, and his son, Mr Emil Mammadov, to continue the proceedings before the Court in the first applicant's stead.

5. On 29 September 2009, after the death of the first applicant, a new application on behalf of the first applicant was lodged by his representative. That application with accompanying documents was added to the original application.

6. On 11 May 2010 Ms Maryam Aliaga gizi Mammadova (*Məryəm Əliağa qızı Məmmədova* – "the second applicant") and Mr Emil Novruzali oglu Mammadov (*Emil Novruzəli oğlu Məmmədov* – "the third applicant") lodged on their own behalf a new application in connection with the first applicant's death in detention. They were represented before the Court by

the same lawyer, Mr R. Mammadov. That application with accompanying documents was added to the original application.

7. On 16 April 2011 the third applicant died. The second applicant expressed her wish to continue the proceedings before the Court in her son's stead.

8. On 27 August 2014 the Government were notified of the complaints raised in the application lodged on 13 August 2007 by the first applicant and the complaints raised in the application lodged on 11 May 2010 by the second and third applicants. The complaints raised in the application lodged on 29 September 2009 on behalf of the first applicant by his representative after the first applicant's death were declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The first applicant was born in 1942 and at the time of the events he lived in Baku.

10. He was a linguist and worked at the Linguistic Institute of the Academy of Sciences of the Republic of Azerbaijan. He was of Talysh ethnicity and carried out research on the Talysh language. He also worked as editor-in-chief of the *Tolishi Sado*, a bilingual Azerbaijani-Talysh newspaper, and regularly published articles therein.

A. The first applicant's arrest, alleged ill-treatment and administrative conviction

1. The first applicant's version of events

11. At around 4 p.m. on 2 February 2007 the first applicant was arrested by agents of the MNS in Javid Park in Baku. He was taken to the premises of the MNS where he was questioned for twenty-three hours about his alleged collaboration with the Iranian intelligence service.

12. He was deprived of water and food and was kept awake. He was also subjected to physical violence. In particular, the fingers of his right hand were several times squashed with a door and he got injuries on his left shoulder. His ill-treatment was stopped owing to his high blood pressure.

13. At around 4 p.m. on 3 February 2007 the MNS's agents took the first applicant by car to the area near the Elmler Akademiyasi metro station in Baku and released him there. The applicant was not provided with any document concerning his arrest and detention.

14. Immediately after his release while the first applicant crossed the road, a police officer approached and arrested him because of his alleged failure to comply with the police officer's request to identify himself. He was taken to Yasamal District Police Station no. 28, where an administrative-offence record was drawn up by police officers. The first applicant refused to sign the record.

15. On the same day the first applicant was taken to the Yasamal District Court and appeared before a judge. The judge found him guilty under Article 310 § 1 (failure to comply with a lawful order of a police officer) of the Code of Administrative Offences and sentenced him to fifteen days' administrative detention.

16. On 5 February 2007 the first applicant's lawyer appealed against that decision. He claimed that the first applicant's administrative conviction had been totally unjustified and that the first-instance court had not examined any evidence proving his guilt. His lawyer further noted that the first applicant had been ill-treated on the premises of the MNS, where he had been unlawfully detained from 4 p.m. on 2 February 2007 to 4 p.m. on 3 February 2007. In that connection, the lawyer submitted that there were bruises on his hand and asked the court to order his forensic examination. The relevant part of the complaint reads as follows:

> "It appeared at the court hearing [before the first-instance court] that N. Mammadov [the first applicant] had also been subjected to physical violence. In fact, the existence of bruises on his left hand was clearly seen."

17. On 9 February 2007 the Court of Appeal dismissed the appeal and upheld the first-instance court's decision. The appellate court's decision made no mention of the lawyer's particular requests and complaints. The hearing was held in the absence of the first applicant.

18. Following his administrative conviction on 3 February 2007 by the Yasamal District Court, he was returned to the premises of the MNS where he was kept until 17 February 2007. He was again ill-treated by MNS agents during that period. In particular, although he suffered from hypertension, prostatitis and hyperthyroidism, he was not provided with the relevant medical care and medication. He was questioned in general at night and no record was drawn up in respect of those interviews. He was given false information about his family according to which his two sons had also been arrested and detained in the next cells and that his wife had been hospitalised and was suffering from a serious disease. He was not provided with clean clothing during this period. His family was not informed of his place of detention.

19. It appears from the documents in the case file that an investigator at the MNS, N.Z., compiled on 9 February 2007 a record on the first applicant's questioning as a witness on the premises of the MNS. The investigator questioned him about his travels to and relations with Iran.

2. The Government's version of events

20. The Government submitted that they had been unable to obtain the files of the case concerning the first applicant's administrative detention as they had been destroyed owing to the expiration of their term of storage. For this reason, the Government were not able to clarify the conditions of the first applicant's detention and treatment to which he had been subjected during this period.

B. Remedies used in respect of the first applicant's alleged ill-treatment and unlawful detention on the premises of the MNS

21. As the first applicant's family had no information about his place of detention following his administrative conviction, his lawyer sent numerous letters and telegrams to the MNS, the Prosecutor General's Office, the Ministry of Internal Affairs and the Court of Appeal asking for information about the first applicant's place of detention. The lawyer also indicated in his submissions that there were bruises on the first applicant's hand, and that the first applicant had to follow a special diet and be provided with the relevant medication because of his state of health.

22. In reply to the above-mentioned requests, by a letter of 9 February 2007 the MNS informed the lawyer that the first applicant had not been arrested or detained on their premises. By a letter of 16 February 2007 the Ministry of Internal Affairs also informed the lawyer that the first applicant had not been taken to or detained in the detention facilities of the Ministry of Internal Affairs.

23. On 15 February 2007 the second applicant lodged a request with the Prosecutor General asking for the first applicant's forensic examination in the presence of his lawyer. In that connection, she noted that at the hearing of 3 February 2007 before the Yasamal District Court the first applicant's family members had noticed injuries to the index finger of his right hand. She further noted that she had not been informed of his place of detention and that the first applicant could not live without his medication because of his state of health.

24. By a letter dated 20 February 2007 the Prosecutor General's Office informed the second applicant that her request concerning the allegedly unlawful actions taken against her husband had been transferred to the Baku City Prosecutor's Office and that she would be informed of the outcome.

25. It appears from the case file that on 7 April 2007 the investigator in charge of the case ordered the first applicant's forensic examination. According to forensic report no. 32/TM, during his examination by the expert on 12 April 2007, the first applicant complained of having been ill-treated on the premises of the MNS on 2 February 2007. In particular, he stated that the index finger of his right hand had been squashed with a chair

and that he had been struck on his left rib cage. The expert concluded that there was not at that time any objective sign of injury on the first applicant's body. The first applicant was not provided with a copy of the report. Despite the Court's explicit request to the Government to submit copies of all the documents relating to the domestic proceedings, the Government failed to provide the Court with a copy of the above-mentioned forensic report.

26. On 8 October 2007 the first applicant lodged an action with the Sabail District Court, asking the court to find violations of his rights protected under Articles 3, 5 and 14 of the Convention. He alleged, *inter alia*, that he had been ill-treated by agents of the MNS between 2 and 17 February 2007, that his arrest and detention on the premises of the MNS from 2 to 3 February 2007 had been unlawful, and that he had been discriminated against on the grounds of his ethnicity. The part of the complaint concerning the first applicant's ill-treatment reads as follows:

> "It appeared from the submissions that he [the first applicant] made to his representative in the presence of the investigator on 17 February 2007 that, although he had not officially asked for medical aid, he suffered from hypertension, prostatitis and poor eyesight. During the period when he had been administratively detained on the premises of the MNS, he had been subjected to unrecorded interviews with 200/220 mm Hg blood pressure, he had not been provided with the relevant medication, and on several occasions, he had not been allowed to go to the toilet with the intention of breaking his will.
>
> ... N. Mammadov had been threatened on several occasions and had been given false information according to which his two sons had also been arrested and detained in the next cells and his wife had been hospitalised on account of a serious heart disease ...
>
> Although the application and request of his wife and representative concerning the violence against N. Mammadov had been addressed to the Prosecutor General's Office, those complaints had been sent first to the Yasamal District Prosecutor's Office and the Baku City Prosecutor's Office, and then again to the Prosecutor General's Office. The latter sent the complaints made on 9 March for a legal assessment two months later to the Investigation Department of the MNS. They were dealt with with delay on purpose so that the visible trace of injuries to the index finger of his right hand would disappear and recover; and the forensic examination had been ordered only in April 2007."

27. On 18 October 2007 the Sabail District Court, which examined the action under the procedure established by Articles 449-51 of the Code of Criminal Procedure concerning appeals against the prosecuting authorities' actions and decisions, dismissed it without addressing any of the first applicant's particular complaints.

28. On 24 October 2007 the first applicant appealed against that decision, reiterating his previous complaints.

29. On 16 November 2007 the Baku Court of Appeal upheld the decision of 18 October 2007.

C. Institution of criminal proceedings against the first applicant and his remand in custody

30. On 17 February 2007 the first applicant was charged with the criminal offence of high treason under Article 274 of the Criminal Code.

31. On the same day the Sabail District Court, relying on the official charges brought against the first applicant and the prosecutor's request for the preventive measure of remand in custody to be applied, ordered the first applicant's detention for a period of three months. The judge substantiated the necessity of this measure by the seriousness of the first applicant's alleged criminal acts, and the possibility of his absconding and obstructing the investigation.

32. On an unspecified date the first applicant appealed against the Sabail District Court's decision of 17 February 2007. He claimed, in particular, that there had been no justification for the application of the preventive measure of remand in custody. He also complained that the court had failed to take into account his personal situation, such as his age and his having a permanent place of residence, when it had ordered his detention pending trial.

33. On 1 March 2007 the Court of Appeal dismissed the appeal, holding that the detention order was justified.

34. On 12 May 2007 the Sabail District Court extended the first applicant's pre-trial detention until 3 August 2007. The court substantiated the need for the extension by the seriousness of the charges and by the necessity of additional time to carry out further investigative steps.

35. On an unspecified date the first applicant appealed against that decision, claiming that he had not committed any crime and that there was no reason for his continued detention.

36. On 31 May 2007 the Court of Appeal upheld the first-instance court's decision.

37. On 28 July 2007 the Sabail District Court extended the first applicant's pre-trial detention until 3 December 2007. The court substantiated the necessity of this extension on the grounds that a number of investigative steps needed to be carried out and thus more time was needed to complete the investigation.

38. On 3 August 2007 the Baku Court of Appeal upheld the first-instance court's decision.

39. On 15 November 2007 the first applicant's case was sent to the Assize Court for trial.

40. On 7 December 2007 the Assize Court held a preliminary hearing. The first applicant complained at the hearing that he had been ill-treated and had been unlawfully detained on the premises of the MNS and asked the court to return the case to the investigators for a new examination. On the same day the Assize Court dismissed his applications. The court further

decided that the preventive measure of remand in custody in respect of the first applicant should remain "unchanged", as there were no grounds for his release.

41. In the course of the proceedings before the Assize Court, the first applicant reiterated his previous complaints relating to the alleged violation of his rights protected under Articles 3 and 5 of the Convention. In this regard, he claimed that he had been ill-treated by agents of the MNS between 2 and 17 February 2007 and that he had been unlawfully arrested and detained by them.

42. It appears from the case file that on 5 March 2008 a judge of the Assize Court ordered the applicant's forensic medical examination, asking the expert to clarify the conclusions of forensic report no. 32/TM (see paragraph 25 above). Following the first applicant's examination on 3 April 2008, the expert concluded in his report, no. 54/TM, that there was no objective sign of injury on the first applicant's body. The expert also concluded that the first applicant's pain in his left shoulder had not been noted in the conclusions of forensic report no. 32/TM as it had not constituted an objective sign of injury. It further appears from report no. 54/TM that the first applicant complained of pains in his left shoulder and these pains were having an effect on the fourth finger of his left hand. However, there was no sign of injury to his finger or left shoulder.

43. On 5 March 2008, following a request from the first applicant's lawyer, a judge at the Assize Court asked the MNS to inform the court, *inter alia*, whether the first applicant had been on the premises of the MNS on 2, 3 and 9 February 2007, whether he had been questioned on the premises of the MNS on 9 February 2007, and whether he had been subjected to a medical examination and what his diagnosis had been.

44. In reply to the judge's letter of 5 March 2008, by a letter dated 16 April 2008 the MNS informed the judge that the first applicant, who was at that time detained in the MNS pre-trial detention facility, had been diagnosed with hypertension and was being provided with the relevant treatment. However, the MNS's letter was silent as to the judge's requests for information concerning the first applicant's presence on the premises of the MNS on 2, 3 and 9 February 2007.

45. On 24 June 2008 the Assize Court convicted the first applicant of high treason and sentenced him to ten years' imprisonment and confiscation of his property. The Assize Court also held, relying on the conclusions of forensic report no. 54/TM, that there had been no objective sign of injury to the first applicant's body.

46. On 26 December 2008 the Baku Court of Appeal upheld the Assize Court's judgment of 24 June 2008.

47. On 27 May 2009 the Supreme Court upheld the Baku Court of Appeal's judgment of 26 December 2008.

D. The first applicant's conditions of detention and death in prison

48. According to the first applicant, he suffered from various medical conditions, including hypertension, prostatitis and hyperthyroidism and poor eyesight before his arrest. He regularly received medical treatment in connection with the above-mentioned conditions.

49. It appears from the documents in the case file that the first applicant was detained from 17 February 2007 to 25 June 2008 in the MNS pre-trial detention facility, from 25 June 2008 to 14 January 2009 in pre-trial detention facility no. 1, from 14 January to 28 July 2009 in prison no. 15, and from 28 July 2009 until his death on 17 August 2009 in the medical facility of the Prison Service ("the medical facility").

50. It appears from the extracts of the first applicant's detention-facility medical record (*tibbi kitabça*) no. 353, as well as from the documents in the case file, that in 2007 and 2008 the first applicant was examined on numerous occasions by doctors. During this period the first applicant's state of health was stable and he mainly complained of high blood pressure and headaches. According to medical record no. 353, which covered the first applicant's detention from 17 February 2007, the first applicant was subjected to initial examination (*ilk baxış*) upon his arrival at the detention facility. The initial examination did not contain references to any injury on his body. The date of the initial examination was not indicated in the medical record, but there was a stamp dated 20 February 2007 on that page of the medical record indicating the result of the first applicant's blood test.

51. It appears from two letters dated 1 and 12 September 2007 sent from the first applicant's lawyer to the head of the MNS pre-trial detention facility that the lawyer asked for information about the first applicant's medical treatment. The lawyer also expressed his gratitude for the conditions created for the first applicant's medical treatment in detention.

52. It also appears from a request from the first applicant dated 30 June 2008 that he asked the head of pre-trial detention facility no. 1 to allow his lawyer to provide him with the medication.

53. As regards the period of his detention from 14 January to 28 July 2009 in prison no. 15, on 14 January 2009, upon his transfer to that facility, the head of that prison decided to place the first applicant in a punishment cell for a period of fifteen days. It appears from the case file that following the intervention of the Azerbaijani Committee against Torture, a local non-governmental organisation, on 21 January 2009 the first applicant was transferred to a normal cell.

54. On 26 January and 19 February 2009 the first applicant's lawyer wrote to the head of prison no. 15, complaining about the first applicant's conditions of detention. The lawyer noted that the first applicant had been placed in a punishment cell for a period of fifteen days without any reason and asked for a copy of the decision in this regard. The lawyer further

submitted that although the first applicant suffered from various medical conditions, he had not been provided with the adequate medical assistance.

55. On 23 February 2009 the first applicant's lawyer lodged an action with the Nizami District Court, complaining of the first applicant's conditions of detention and the violation of his rights protected under Articles 3 and 13 of the Convention. In particular, he pointed out that the first applicant had been unlawfully placed in a punishment cell and had not been provided with the adequate medical assistance.

56. On 6 March 2009 the Nizami District Court partially allowed the action, holding that the first applicant's placement in a punishment cell had been unlawful. The court also found that the first applicant had not been subjected to a medical examination upon his arrival at the prison and ordered the latter to carry out a medical examination of the first applicant and to provide him with adequate medical care. It further appears from the judgment that the head of the medical department of prison no. 15 stated at the court hearing that he had been on leave when the first applicant had been placed in a punishment cell and that he had requested to be transferred to a normal cell immediately after his return to work. He further stated that the first applicant suffered from hypertension and that he had informed the first applicant of the necessity of his transfer to a specialised medical establishment, but the first applicant had rejected that suggestion.

57. On 29 March 2009 the first applicant appealed against that judgment, noting that the first-instance court had failed to acknowledge the violation of his rights protected under Articles 3 and 13 of the Convention. In particular, he noted that he had been detained from 14 to 21 January 2009 in a punishment cell which had been windy, wet and not heated. He also pointed out that the cell had not received natural light and that he had not been provided with the relevant clothing. During this period, he had been obliged to remain standing from 5 a.m. to 9 p.m. every day as there had been no chair in the cell. In his appeal the first applicant confirmed that the head of the medical department of prison no. 15 had proposed his transfer to a specialised medical establishment. In that connection, he submitted that he had refused that proposal because of his financial situation as he had not considered that he would have been provided with the adequate medical assistance free of charge.

58. On 16 April 2009 the Baku Court of Appeal dismissed the appeal. The appellate court's decision was not amenable to appeal.

59. It appears from the documents in the case file that in the meantime, as evidenced by a document dated 30 March 2009 and signed by the first applicant, the latter refused to be transferred to a specialised medical establishment. He substantiated his refusal by the poor quality of medical treatment in that particular medical establishment.

60. It appears from the documents in the case file that on 7 July 2009 the first applicant again refused to be transferred to a specialised medical

establishment. In that connection, he submitted that he had not had any financial means and that he had not thought that he would have been provided with the adequate medical assistance there.

61. It further appears from the extracts of the first applicant's medical records that he refused on several occasions to be examined by the doctors. Various medical records were compiled by the doctors in this connection.

62. On 28 July 2009 the first applicant was transferred upon his consent to the medical facility with the diagnosis of osteochondrosis of the cervical vertebrae (*boyun fəqərələrinin osteoxondrozu*) and right shoulder plexus (*sağ tərəfli çiyin pleksiti*).

63. It appears from a letter dated 14 August 2009 and signed by the head of the medical facility, sent in reply to an information request from the first applicant's lawyer, that upon his arrival at the medical facility the first applicant mainly complained of neck pains, general weakness and dyspnea. On various dates indicated in the letter the first applicant was examined by a number of specialists, including a neurosurgeon, an endocrinologist, a urologist and an ophthalmologist, who confirmed the diagnosis of osteochondrosis of the cervical vertebrae and right shoulder plexus. The doctors also confirmed that the first applicant suffered from various other medical conditions such as hypertension, prostatitis, acute cholecystitis, bronchitis, hyperthyroidism and cataracts.

64. On 17 August 2009 the first applicant died. According to the death certificate, the death resulted from an ischemic cerebral infarction (*baş beyinin işemik infarktı*).

E. Criminal investigation concerning the first applicant's death

65. Following the death of the first applicant, the Nizami District Prosecutor's Office launched a criminal inquiry into the circumstances of his death.

66. On 18 August 2009 the deputy prosecutor of the Nizami District Prosecutor's Office ordered a post-mortem examination of the body, which was carried out on the same day, for the purposes of determining the cause of death. Report no. 105 dated 29 August 2009 showed that death had resulted from an acute ischemic cerebral infarction (*baş beyinin kəskin işemik infarktı*).

67. On 24 August 2009 the second applicant lodged a request with the Prosecutor General, claiming that the first applicant had died in detention because he had not been provided with the adequate medical treatment after January 2009. In that connection, she submitted that the first applicant's state of health had worsened following his placement in a punishment cell between 14 and 21 January 2009 in prison no. 15 and that his medical treatment following that had not been adequate.

68. By a letter dated 27 August 2009, the Baku City Prosecutor's Office returned the documents of the criminal inquiry to the Nizami District Prosecutor's Office, finding that the inquiry into the first applicant's death had not been conducted thoroughly. In particular, the Baku City Prosecutor's Office held that the Nizami District Prosecutor's Office had failed to determine the medical conditions from which the first applicant had suffered and whether he had been provided with adequate medical assistance. It further found that the first applicant's cellmates and the doctors examining him in prison had not been questioned by the prosecuting authorities.

69. On 31 August 2009 the deputy prosecutor of the Nizami District Prosecutor's Office ordered a forensic examination by a panel of experts. The prosecutor asked the experts to establish whether the first applicant had been provided with adequate medical assistance, whether his medical conditions had been correctly diagnosed and whether his death had resulted from a lack of adequate medical treatment in detention.

70. Report no. 177/KES dated 1 September 2009, which examined only the period of the first applicant's treatment following his transfer to the medical facility on 28 July 2009, showed that the first applicant's medical conditions had been correctly diagnosed and treated in the medical facility. The three experts furthermore found that, although the first applicant had been suffering from numerous conditions (such as osteochondrosis, hypertension, prostatitis, cataracts), the latter could not have developed during a short period of time and could only have appeared following long pathological processes in his body. The report further found that the death had resulted from a cerebral infarction as a result of thrombosis inside cerebral blood vessels and was not related to his medical treatment.

71. On 28 September 2009 the deputy prosecutor of the Nizami District Prosecutor's Office refused to institute criminal proceedings in connection with the first applicant's death because of the lack of evidence of a crime in his death. He relied in this connection on the findings of the above-mentioned two forensic expert reports, concluding that the first applicant's medical treatment had been adequate and that there had been no causal link between his medical treatment and death. The decision also referred to the statements from various doctors and the first applicant's cellmates according to which the medical treatment had been adequate and that the first applicant had not made any complaint in this connection during his treatment. In particular, the head of the medical department of prison no. 15 stated that although the first applicant's transfer to the medical facility had been proposed on several occasions, he had refused that proposal.

72. On 21 October 2009 the second and third applicants lodged a complaint against the prosecutor's decision of 28 September 2009 with the Nizami District Court, asking the court to overrule it. They claimed that the first applicant had not been provided with adequate medical assistance in

detention and that his unlawful placement in a punishment cell on 14 January 2009 had resulted in the development of numerous diseases. In that connection, they complained that the first applicant had been transferred to the medical facility only on 28 July 2009, despite the fact that on 6 March 2009 the Nizami District Court ordered prison no. 15 to provide the first applicant with adequate medical care. They further submitted that they had not been provided with a copy of the first applicant's medical records and the forensic reports relating to his death and that they had been provided with a copy of the prosecutor's decision of 28 September 2009 only on 19 October 2009.

73. On 2 November 2009 the Nizami District Court dismissed the complaint. The court found that the first applicant had been provided with adequate medical care. It further noted that although his transfer to the medical facility had been proposed on several occasions before 28 July 2009, he had rejected these proposals.

74. On 5 November 2009 the second and third applicants appealed against that decision, reiterating their previous complaints.

75. On 17 November 2009 the Baku Court of Appeal dismissed the appeal. As to the argument that the Nizami District Court's decision of 6 March 2009 had not been executed, the appellate court found that the first applicant had refused to be transferred to the medical facility. That decision was not amenable to appeal.

II. RELEVANT DOMESTIC LAW

76. The Law on Protection of the Health of the Population ("the Health Law") of 26 June 1997 provides in Article 27 that a patient, or his or her legal representative, is entitled to refuse medical treatment or request that it be stopped. If a patient refuses medical treatment, that person, or a legal representative, has to be explained (*izahat verilməlidir*) of the possible consequences of such a refusal. The refusal and the information about the possible adverse effects of such a refusal have to be recorded in the person's medical file and be signed by the patient or the patient's legal representative, and by the relevant doctor. In accordance with Article 10.2.5 of the Code on Execution of Punishments, prisoners are entitled to inpatient and outpatient medical care.

77. Chapter LII of the Code of Criminal Procedure ("the CCrP") lays down the procedure by which parties to criminal proceedings may challenge actions or decisions of the prosecution authorities before the courts. Article 449 provides that a victim or his or her counsel may challenge such actions or decisions as, *inter alia*, the prosecution authorities' refusal to institute criminal proceedings or to terminate them. A judge examining the lawfulness of the prosecution authorities' actions or decisions may overrule them if he or she finds them to be unlawful (Article 451). This decision is

amenable to appeal in accordance with the procedure established in Articles 452 and 453 of the CCrP.

78. The relevant provisions of the CCrP concerning pre-trial detention 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). The relevant decisions of the Plenum of the Supreme Court concerning pre-trial detention are described in detail in the Court's judgment in *Allahverdiyev v. Azerbaijan* (no. 49192/08, §§ 31-32, 6 March 2014).

THE LAW

I. PRELIMINARY ISSUE

79. The Court at the outset notes that the first applicant, Mr Novruzali Mammadov, died after lodging the application of 13 August 2007 and that his wife (the second applicant) and his son (the third applicant) have expressed their wish to continue the proceedings before the Court (see paragraph 4 above). Furthermore, the third applicant, Mr Emil Mammadov, died after lodging the application of 11 May 2010. The Court notes that his mother (the second applicant) has expressed her wish to continue the proceedings before the Court (see paragraph 7 above). The Government did not dispute the second applicant's standing to pursue the application in the first and third applicants' stead.

80. The Court notes that in various cases in which an applicant has died in the course of the Convention proceedings, it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court (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 has accepted that the next-of-kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014, and *Ksenz and Others v. Russia*, nos. 45044/06 and 5 others, § 86, 12 December 2017). In view of the above and having regard to the circumstances of the present case, the Court accepts that the second applicant has a legitimate interest in pursuing the application in the late applicants' stead. However, for reasons of convenience, the text of this judgment will continue to refer to Mr Novruzali Mammadov as "the first applicant" and Mr Emil Mammadov as "the third applicant", even though only the second applicant is today to

be regarded as having the status of applicant before the Court (see *Gulub Atanasov v. Bulgaria*, no. 73281/01, § 42, 6 November 2008, and *Isayeva v. Azerbaijan*, no. 36229/11, § 62, 25 June 2015).

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

81. Relying on Articles 5 and 13 of the Convention, the first applicant complained that his detention between 2 and 3 February 2007 on the premises of the MNS had been unlawful and that he had had no effective remedy in this connection. The Court considers that the present complaint falls to be examined solely under Article 5 § 1 of the Convention, which reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation 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;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
>
> (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
>
> (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

A. Admissibility

82. 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

83. The first applicant maintained his complaint, submitting that there had been no legal basis for his detention between 2 and 3 February 2007 on the premises of the MNS.

84. The Government did not make any submission in respect of this complaint.

2. The Court's assessment

85. The Court refers to the general principles established in its case-law set out in the judgment *Nagiyev v. Azerbaijan* (no. 16499/09, §§ 54-57, 23 April 2015), which are equally pertinent to the present case.

86. The Court notes that in the present case while the first applicant maintained that he had been in detention on the premises of the MNS between 2 and 3 February 2007, the Government did not make any submission. The Court notes that the first applicant raised the same complaint before the domestic courts, within the framework of various court proceedings, reiterating that he had been unlawfully detained between 2 and 3 February 2007 on the premises of the MNS (see paragraphs 16, 26 and 41 above). However, the domestic courts never addressed this complaint in their decisions.

87. In that connection, the Court also observes that although a judge at the Assize Court asked the MNS to inform the court whether the first applicant had been on its premises between 2 and 3 February 2007, the MNS failed to reply to the judge's information request on this point (see paragraphs 43-44 above). Moreover, despite the Court's explicit request to the Government to submit copies of all the documents relating to the domestic proceedings, the Government failed to provide the Court with any document relating to the first applicant's present complaint, such as the extracts from the logbook of the premises of the MNS between 2 and 3 February 2007.

88. In these circumstances, in view of the Government's silence and inability to provide any evidence capable of rebutting the first applicant's version of events and given the consistent and plausible nature of the first applicant's submissions, the Court accepts the first applicant's version of events concluding that he had been in detention on the premises of the MNS between 2 and 3 February 2007.

89. As regards the question of whether the first applicant's detention during this period was "lawful" within the meaning of Article 5 § 1 of the Convention, the Court notes that the first applicant's deprivation of liberty – from 2 to 3 February – was not documented at all. The Court reiterates in this connection that the unrecorded detention of an individual is a complete

negation of the fundamentally important guarantees contained in Article 5 of the Convention, and discloses a grave violation of that provision (see *Anguelova v. Bulgaria*, no. 38361/97, § 154, ECHR 2002-IV, and *Nagiyev*, cited above, § 64).

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

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

91. The first applicant complained under Article 5 of the Convention that the domestic courts had failed to justify the need for his pre-trial detention, to provide reasons for his continued detention and to examine the arguments he had put forward in favour of his release. The Court considers that these complaints fall to be examined under Article 5 § 3 of the Convention, which reads 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

92. 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

93. The first applicant maintained his complaint.

94. The Government contested the first applicant's submissions, pointing out that the domestic courts had given sufficient and relevant reasons for the first applicant's pre-trial detention.

2. The Court's assessment

95. The Court refers to the general principles established in its case-law set out in the judgment *Buzadji v. the Republic of Moldova* [GC] (no. 23755/07, §§ 84-91, 5 July 2016), which are equally pertinent to the present case.

96. As regards the period to be taken into consideration for the purposes of Article 5 § 3, in the present case, this period commenced on 17 February

2007, when the first applicant's pre-trial detention was ordered within the framework of the criminal proceedings instituted against him, and ended on 24 June 2008, when the first-instance court convicted him. Thus, the first applicant's pre-trial detention lasted one year, four months and seven days in total.

97. The Court observes that the first applicant's pre-trial detention was first ordered for a period of three months when he was brought before the judge at the Sabail District Court on 17 February 2007. That decision was upheld by the Court of Appeal on 1 March 2007. His detention was subsequently extended by the Sabail District Court's decision of 12 May 2007 until 3 August 2007. That decision was upheld by the Court of Appeal's decision of 31 May 2007. On 28 July 2007 the Sabail District Court again extended the first applicant's pre-trial detention until 3 December 2007 and that decision was upheld by the Baku Court of Appeal on 3 August 2007. On 7 December 2007 the Assize Court held at its preliminary hearing that the preventive measure of remand in custody in respect of the first applicant should remain "unchanged".

98. The Court observes that both the first-instance courts and the appellate courts used a standard template when ordering and extending the first applicant's pre-trial detention (see paragraphs 31-40 above). In particular, the Court notes that the domestic courts 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 to the first applicant's case. They failed to mention any case-specific facts relevant to those grounds and to substantiate them with relevant and sufficient reasons (see *Farhad Aliyev*, cited above, §§ 191-94, and *Muradverdiyev*, cited above, §§ 87-91).

99. The Court further observes that the domestic courts also relied on irrelevant grounds when they extended the first applicant's pre-trial detention. In particular, they substantiated their decisions by stating that more time was needed to complete the investigation (see paragraphs 34 and 37 above). However, the Court reiterates that, under Article 5 § 3, grounds such as the need to implement further investigative measures, or the fact that proceedings have not yet been completed, do not correspond to any of the acceptable reasons for detaining a person pending trial (see *Allahverdiyev*, cited above, § 60).

100. 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 first applicant's case, and by relying on irrelevant grounds, the authorities failed to give "relevant" and "sufficient" reasons to justify the need for the first applicant's pre-trial detention.

101. Accordingly, there has been a violation of Article 5 § 3 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

102. The first applicant complained that he had been ill-treated by agents of the MNS between 2 and 17 February 2007 and that the domestic authorities had failed to investigate his allegation of ill-treatment. Article 3 of the Convention reads:

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

A. Admissibility

103. 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. Alleged ill-treatment of the first applicant

(a) The parties' submissions

104. The first applicant maintained his complaint, reiterating that he had been ill-treated by agents of the MNS on its premises between 2 and 17 February 2007. In particular, he averred that the fingers of his right hand had been squashed with a door several times and he had suffered injuries to his left shoulder as a result of his treatment. His physical ill-treatment had been stopped only owing to his high blood pressure. During this period, although he had suffered from hypertension, prostatitis and hyperthyroidism, he had not been provided with the adequate medical care and the relevant medication. He had been questioned in general at night and had been kept awake. During these undocumented interviews, as the investigator knew that the first applicant had suffered from prostatitis, he had constantly refused to allow him to use the toilet and obliged him to urinate in his pants. The first applicant had been kept in the dirty and urine-smelling clothing during this period and had not been provided with clean clothing. He had been given false information about his family according to which his two sons had also been arrested and detained in the next cells and that his wife had been hospitalised and had been suffering from a serious disease. His family had not been informed of his place of detention.

105. The Government submitted that they had been unable to make submissions about the treatment to which the first applicant had been subjected because the case files concerning his arrest and detention during this period had been destroyed owing to the expiration of their term of storage. They further submitted that the first applicant's ill-treatment

allegation had been examined by the domestic courts, which had dismissed it as unsubstantiated.

(b) The Court's assessment

(i) General principles and the first applicant's allegation of detention on the premises of the MNS between 2 and 17 February 2007

106. The Court refers to the general principles established in its case-law set out in the judgments *Emin Huseynov v. Azerbaijan* (no. 59135/09, §§ 54-57, 7 May 2015) and *Mustafa Hajili v. Azerbaijan* (no. 42119/12, §§ 34-37, 24 November 2016), which are equally pertinent to the present case.

107. The Court notes that in the present case while the first applicant maintained that he had been ill-treated on the premises of the MNS between 2 and 17 February 2007, the Government submitted that they had been unable to make submissions about the treatment to which the first applicant had been subjected because the case files concerning his arrest and detention during this period had been destroyed owing to the expiration of their term of storage.

108. In that connection, the Court firstly refers to its finding that the first applicant was detained on the premises of the MNS from 2 to 3 February 2007 (see paragraph 88 above). As regards the period between 3 and 17 February 2007, the Court observes that the Government failed to give any information about the first applicant's place of detention between 3 and 17 February 2007 in their observations lodged with the Court. Moreover, despite numerous requests from the first applicant's lawyer and family members to the relevant law-enforcement authorities and the domestic courts, they were never informed of the first applicant's place of detention following his administrative conviction by the Yasamal District Court on 3 February 2007. The relevant domestic authorities, in particular the MNS in a letter dated 9 February 2007, informed them that the first applicant had not been arrested and detained on their premises, without giving any information about his place of detention (see paragraph 22 above). However, it appears from the documents in the case file that on the same day – 9 February 2007 – the first applicant was questioned by an investigator on the premises of the MNS (see paragraph 19 above).

109. In these circumstances, on the basis of the material before it and given the consistent and plausible nature of the first applicant's submissions, the Court accepts the first applicant's version of events, concluding that following his administrative conviction on 3 February 2007 he was again returned to the premises of the MNS and was detained there between 3 and 17 February 2007.

(ii) As regards the alleged ill-treatment of the first applicant

110. The Court observes that the first applicant presented a detailed description of his ill-treatment by agents of the MNS during the period between 2 and 17 February 2007. It notes that while the consequences of the ill-treatment allegedly happening on 2 February 2007 could lead to visible consequences (squashing of the fingers with a door and injuring the shoulder), the same is not true for the ill-treatment allegedly happening between 3 and 17 February 2007 (no provision of medical care and medication for hypertension, prostatitis and hyperthyroidism (see paragraphs 119-21 below), questioning at night, alarming, but false information about the family).

111. The Court has consistently held that the standard of proof "beyond reasonable doubt" may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 161 *in fine*, Series A no. 25, and *Labita v. Italy* [GC], no. 26772/95, § 121, ECHR 2000-IV). Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of people within their control in custody, strong presumptions of fact will arise in respect of injuries, death or disappearances occurring during such detention. The burden of proof may then be regarded as resting on the authorities to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII, and *Bouyid v. Belgium* [GC], no. 23380/09, § 83, ECHR 2015).

112. The Court notes at the outset that, the first applicant in the present case has not presented any medical evidence in support of his allegations of the ill-treatment with potentially visible consequences. While the Court has underlined the importance of medical evidence on many occasions, the Court has accepted, albeit in exceptional circumstances, that the applicant has made a prima facie case of a violation of Article 3 in light of all the evidence before the Court. In such cases the Court emphasized the importance of the applicant's detailed statements about the incidents, which consistently support his allegations of ill-treatment as well as the reaction of the authorities (see *Tsakoyevy v. Russia*, no. 16397/07, §§ 118-19, 2 October 2018).

113. The Court points out at the outset that it has already established that the first applicant had been detained from 2 to 17 February 2007 on the premises of the MNS and that his detention from 2 to 3 February 2007 had been unlawful. The first applicant's family and lawyer had not been informed of his place of detention between 2 and 17 February 2007 and they could see him only once on 3 February 2007, when he was taken to the Yasamal District Court within the framework of the administrative

proceedings. In these circumstances, the Court considers that the first applicant could not have obtained any medical evidence in support of his allegation of ill-treatment during this period when he had been detained on the premises of the MNS without any access to the outside world.

114. The Court further notes that the statements of the first applicant are supported by his lawyer and family, who observed bruises on his hand. The first applicant's own version of the events happening between 2 and 17 February 2007 has been consistent and plausible as far as essential elements are concerned. While there appear to be a contradiction between the description of the injuries given by the first applicant and his lawyer, in particular as to whether the injury was on the first applicant's right or left hand, or whether the first applicant's right or left shoulder was injuried (see paragraphs 12, 16, 25 and 42 above), such inconsistency is not in itself sufficient to discredit the statements of the first applicant and his lawyer, taking into account the overall circumstances of the case.

115. In that connection, the Court draws attention to the fact that, while the first applicant's lawyer immediately complained of the first applicant's alleged ill-treatment in his appeal lodged on 5 February 2007, the Court of Appeal ignored that complaint in its decision of 9 February 2007, without ordering the first applicant's forensic examination (see paragraphs 16-17 above). Furthermore, although on 20 February 2007 the Prosecutor General's Office informed the second applicant that her complaint concerning the first applicant's alleged ill-treatment had been transferred to the Baku City Prosecutor's Office (see paragraph 24 above), the investigator in charge of the case ordered the first applicant's forensic examination only on 7 April 2007, which was carried out on 12 April 2007. No explanation for this delay was given by the Government. Moreover, despite the Court's explicit request to the Government to submit copies of all the documents relating to the domestic proceedings, the Government failed to provide the Court with a copy of forensic report no. 32/TM. The Court also cannot overlook the fact that medical record no. 353, which did not contain references to any injury on the first applicant's body during his initial examination upon his arrival at the MNS pre-trial detention facility, was not correctly dated and signed in its part concerning the first applicant's initial examination.

116. In the instant case, having regard to the fact that there was witness evidence about injuries (even if it came from the first applicant's lawyer and family members), that the first applicant was detained by the authorities in an undisclosed location at the time when the alleged acts of ill-treatment took place, that the events complained of lied wholly within the exclusive knowledge of the authorities, and that the first applicant's version of events has been consistent and plausible as far as essential elements are concerned and that the Government have failed to submit sufficient information or evidence calling into question the first applicant's version of events, the

Court must thus accept the first applicant's account of events and concludes that he was subjected to ill-treatment when detained on the premises of the MNS between 2 and 17 February 2007.

117. As to the seriousness of the act of ill-treatment, the Court considers that the first applicant's ill-treatment must have caused him physical pain and suffering. The ill-treatment in question and its consequences must have also caused the first applicant considerable mental suffering, diminishing his human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

118. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb on account of the first applicant's ill-treatment between 2 and 17 February 2007.

(iii) As regards the alleged deprivation of the medical care of the first applicant

119. The Court notes that it is undisputed by the parties that at the time of his detention on the premises of the MNS between 2 and 17 February 2017 the first applicant suffered from hypertension, prostatitis and hyperthyroidism and, in view of the nature of his illnesses, he had to regularly take medication and should have been provided with the adequate medical care. However, it is clear from the documents in the case file that his lawyer and family members were not informed of his place of detention during this period and were thus unable to provide him with the necessary medication. Moreover, the Government failed to submit any information or evidence that the first applicant had been provided with the adequate medical care and the relevant medication between 2 and 17 February 2017. The Court thus accepts the first applicant's version of events that he was not provided with the adequate medical care and the relevant medication during that period despite the fact that he suffered from hypertension, prostatitis and hyperthyroidism.

120. As to the seriousness of the act of ill-treatment, the Court considers that although the first applicant's deprivation of medical care lasted only fifteen days, given the first applicant's advanced age and his vulnerable state of health, this ill-treatment must have caused him physical pain and suffering. The ill-treatment in question and its consequences, exacerbated by the absence of any access to the outside world between 3 and 17 February 2007, must have also caused the first applicant considerable mental suffering, diminishing his human dignity. In these circumstances, the Court considers that the ill-treatment complained of was sufficiently serious to attain a minimum level of severity falling within the scope of Article 3 and to be considered as inhuman and degrading treatment.

121. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb on account of the first applicant's deprivation of the medical care between 2 and 17 February 2007.

2. Alleged failure to carry out an effective investigation

122. The parties did not make any specific observations on this point.

123. The Court refers to the general principles established in its case-law set out in the judgment *Bouyid v. Belgium* [GC] (no. 23380/09, §§ 114-123, ECHR 2015), which are equally pertinent to the present case.

124. Turning to the circumstances of the present case, the Court considers that the first applicant's complaint made before the domestic authorities contained enough specific information – the date, place and nature of the alleged ill-treatment when detained on the premises of the MNS – (see paragraphs 21-29 above) to constitute an arguable claim in respect of which those authorities were under an obligation to conduct an effective investigation. However, no criminal investigation was carried out in the instant case into the first applicant's allegation of ill-treatment.

125. In this connection, the Court notes that it is true that the first applicant was examined by a forensic expert following a complaint from his lawyer and family members. However, even though the first applicant's claim of ill-treatment was brought to the domestic authorities in a prompt manner, the authorities failed to order a forensic examination until two months after the incident. The Court reiterates that a failure to secure the forensic evidence in a timely manner is one of the most important factors in assessing the overall effectiveness of an investigation into allegations of ill-treatment (see *Mammadov v. Azerbaijan*, no. 34445/04, § 74, 11 January 2007). As stated above, in the present case, prompt forensic examination was crucial as signs of injury might have disappeared rather quickly, resulting in the complete or partial loss of evidence before the forensic examination was carried out. A timely medical examination could have enabled a medical expert to reach a definitive conclusion as to the existence and time the injuries had been inflicted (see *Rizvanov v. Azerbaijan*, no. 31805/06, § 59, 17 April 2012).

126. In any event, the Court notes that the forensic examination is only one of the means for the investigation to secure the evidence during the examination of an ill-treatment allegation. The Court notes that in the present case as there was no criminal investigation in respect of the first applicant's allegation of ill-treatment, the first applicant, alleged perpetrators of the ill-treatment, the first applicant's lawyer and family members or any other possible witness were not interviewed by the investigator. No explanation was given by the Government as to the domestic authorities' failure to conduct an investigation in this connection (see *Jannatov v. Azerbaijan*, no. 32132/07, § 53, 31 July 2014).

127. The Court further observes that the first applicant raised the same complaint before the domestic courts which had ordered his remand in custody. However, they ignored his allegation of ill-treatment and their decisions made no mention of it (see paragraphs 16-17 above). As to the separate proceedings instituted by the first applicant in respect of his alleged ill-treatment, the Court notes that in these proceedings the domestic courts merely dismissed his allegation of ill-treatment as unsubstantiated without conducting an effective judicial investigation (see paragraphs 26-29 above). In particular, the domestic courts failed to hear evidence from the first applicant, the alleged perpetrators of the ill-treatment, or any other possible witness (see *Igbal Hasanov v. Azerbaijan*, no. 46505/08, § 39, 15 January 2015).

128. The foregoing considerations are sufficient to enable the Court to conclude that there was no effective investigation of the first applicant's claim of ill-treatment.

129. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

V. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

130. The second and third applicants alleged that the first applicant had died in detention owing to a lack of adequate medical assistance and that there had been no effective investigation of his death. Article 2 of the Convention provides in so far as relevant:

> "1. Everyone's right to life shall be protected by law. ..."

A. Admissibility

131. 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. Substantive aspect of Article 2 of the Convention

(a) The parties' submissions

132. The second and third applicants maintained their complaint that the first applicant had died as result of a lack of adequate medical treatment in detention. In particular, they argued that the domestic authorities had failed to execute the Nizami District Court's judgment of 6 March 2009, which had ordered the prison to provide the first applicant with adequate medical

care, as he had been transferred to the medical facility only on 28 July 2009. According to them, the first applicant's medical treatment in the medical facility with the involvement of various specialists had been only of a symptomatic nature as it had been tardily conducted at a point when the first applicant had already fallen into in a critical condition.

133. As regards the first applicant's refusal to be transferred to the medical facility, the second and third applicants submitted that on 30 March and 7 July 2009 the first applicant had refused such a transfer because money had been demanded for his medical treatment and he had not been sure that the latter would have been adequate. They further contested the authenticity of various records compiled by the doctors confirming that the first applicant had refused to follow his medical treatment. In that connection, they noted that these records had not been signed by the first applicant.

134. The Government contested the second and the third applicants' submissions. They submitted that the first applicant had remained under dynamic medical supervision and had been provided with the appropriate medical care. The first applicant's state of health had always been characterised as relatively satisfactory and he had not been a bedridden patient. On 17 August 2009 his state of health had sharply worsened and he had died despite the intervention of specialist doctors.

135. The Government further referred to the first applicant's refusal of 30 March 2009, submitting that he had refused the transfer, as he had stated that he would not have been provided with the relevant medical care in the medical facility. Moreover, he had refused to take the prescribed medicines, except those for regulating his blood pressure and urination.

(b) The Court's assessment

136. The Court refers to the general principles established in its case-law set out in the judgment *Mustafayev v. Azerbaijan* (no. 47095/09, §§ 52-54, 4 May 2017), which are equally pertinent to the present case.

137. The Court observes that in the present case it is undisputed by the parties that the first applicant died from an ischemic cerebral infarction in detention under the authorities' control. In order to establish whether or not the respondent State complied with its obligation to protect life under Article 2 of the Convention, the Court must examine whether the domestic authorities did everything reasonably possible, in good faith and in a timely manner, to try to avert the fatal outcome of this case (see *Karpylenko v. Ukraine*, no. 15509/12, § 81, 11 February 2016, and *Karakhanyan v. Russia*, no. 24421/11, § 45, 14 February 2017).

138. The Court observes at the outset that, although the first applicant had suffered from a number of medical conditions, he had not suffered from any potentially life-threatening disease. It further notes that whereas on 6 March 2009 the Nizami District Court ordered prison no. 15 to provide

the first applicant with adequate medical care, it did not order his transfer to a specialised medical establishment. However, it appears from the documents in the case file that in the course of the proceedings before the above-mentioned court the head of the medical department of prison no. 15 confirmed the necessity of the first applicant's transfer to a specialised medical establishment (see paragraph 56 above). The first applicant was transferred to the medical facility on 28 July 2009.

139. In these circumstances, without speculating on any link between the first applicant's death and his tardy transfer to the medical facility and bearing in mind that the object of its examination is whether or not the domestic authorities did everything reasonably possible in order to safeguard the first applicant's life, the Court considers it necessary to examine whether the first applicant's tardy transfer to the medical facility is attributable to the Government. Taking into account that the circumstances of the first applicant's death lie wholly within the exclusive knowledge of the authorities, the Court considers that the burden of proof is on the Government to provide a satisfactory and convincing explanation of their version (see *Karsakova v. Russia*, no. 1157/10, § 49, 27 November 2014).

140. The Court observes that the Government relied mainly on the first applicant's refusal on 30 March 2009 to be transferred to the medical facility and various records drawn up by the doctors concerning his refusal to take the prescribed medicines, except those for regulating his blood pressure and urination. The Court notes that it is undisputed by the second and third applicants that the first applicant refused to be transferred to the medical facility at least on two occasions between 6 March and 28 July 2009 (see paragraphs 59-60 above). It further appears from the submissions of the head of the medical department of prison no. 15 at the hearing of 6 March 2009 before the Nizami District Court that, although the first applicant had already been informed of the necessity of his transfer to a specialised medical establishment, the first applicant had rejected that suggestion (see paragraph 56 above). In that connection, the Court cannot accept the argument put forward by the second and third applicants that the first applicant had refused such a transfer because of his financial situation and the quality of medical care in the medical facility, as under domestic law prisoners were provided with medical care free of charge and there is no evidence in the case file that money was demanded for his transfer or the quality of medical care in the medical facility was not adequate. Moreover, the present case should be distinguished from the cases in which the applicants, suffering from a potentially life-threatening disease, interrupted their medical treatment and were consequently deprived of life-saving treatment without sufficient grounds (compare *Karakhanyan*, cited above, §§ 45-50). However, in the present case the first applicant had not suffered from any potentially life-threatening disease and had continued to take the medicines for regulating his blood pressure and urination.

141. In the light of the above, the Court considers that the delay in the first applicant's transfer to the medical facility is not attributable to the domestic authorities. Therefore, the Court concludes that the domestic authorities did everything reasonably possible, in good faith and in a timely manner, to try to avert the fatal outcome of this case.

142. There has accordingly been no violation of Article 2 of the Convention under its substantive aspect.

2. Procedural aspect of Article 2 of the Convention

(a) The parties' submissions

143. The second and third applicants maintained that the criminal inquiry into the death of the first applicant had been ineffective. In particular, they submitted that the domestic authorities had not examined the reason for the failure to execute the Nizami District Court's judgment of 6 March 2009 and to provide the first applicant with the relevant medical assistance.

144. The Government submitted that the investigation had been effective and had complied with the procedural guarantees provided for by Article 2 of the Convention.

(b) The Court's assessment

145. The Court refers to the general principles established in its case-law set out in the *Mustafayev* judgment (cited above, §§ 71-73), which are equally pertinent to the present case.

146. Turning to the circumstances of the present case, the Court notes that the second and third applicants complained of the inadequacy of the investigation into the first applicant's death carried out by the domestic authorities.

147. A criminal inquiry was launched by the prosecuting authorities immediately after the first applicant's death and on 28 September 2009 the Nizami District Prosecutor's Office refused to institute criminal proceedings in connection with the death of the first applicant. That decision was upheld by the domestic courts. It remains to be assessed whether the criminal inquiry was effective, as required by Article 2.

148. In that connection, the Court notes that, although the investigation established that the first applicant had been tardily transferred to the medical facility, the two expert reports on which the prosecuting authorities' decision was based concerned only the cause of the death and the first applicant's medical treatment following his transfer to the medical facility on 28 July 2009, and did not concern the consequences of his tardy transfer to the medical facility (see paragraphs 66 and 70 above). The latter question was not addressed by the expert reports.

149. The Court also notes that, although it had been established during the investigation that the first applicant had refused to be transferred to the medical facility, the prosecuting authorities failed to examine the circumstances surrounding his refusals. Furthermore, they failed to clarify if there was a causal link between the first applicant's placement in a punishment cell found to be illegal by the Nizami District Court and his death as alleged by the second and third applicants (see paragraph 67 above).

150. The Court further observes that the prosecuting authorities failed to inform the second and third applicants of the progress of the investigation and to involve them in the investigation by providing them in a timely manner with the relevant decisions taken within the framework of the criminal proceedings. In particular, it appears from the documents in the case file that they obtained a copy of the expert reports carried out during the investigation for the first time in the court proceedings instituted against the prosecuting authorities' decision (see paragraph 72 above).

151. The foregoing considerations are sufficient to enable the Court to conclude that the domestic authorities failed to carry out an adequate and effective investigation into the circumstances surrounding the death of the first applicant. It accordingly holds that there has been a violation of Article 2 under its procedural limb.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

152. 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

153. The second applicant claimed EUR 500,000 in respect of non-pecuniary damage.

154. The Government submitted that the second applicant's claim was unsubstantiated.

155. The Court considers that the second 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 second applicant the sum of EUR 20,000 under this head, plus any tax that may be chargeable on this amount (see *Mustafayev*, cited above, § 90).

B. Costs and expenses

156. The second applicant claimed EUR 7,000 for costs and expenses incurred before the domestic courts and the Court. In support of her claim, she submitted two contracts concluded between the applicants and their representative before the Court and one contract concluded between their representative and another lawyer who undertook to provide the representative with legal assistance during the examination of the case by the Court.

157. The second applicant also claimed a further EUR 2,691 and EUR 2,195 for translation and postage costs. In support of her claim, she submitted various contracts concluded with a company providing translation services and numerous invoices and receipts for postage costs.

158. The Government considered the claim unsubstantiated and excessive. In particular, they submitted that the contract between the representative and another lawyer could not be considered relevant as the latter did not represent the applicants before the Court. The Government also disputed the relevance of the translation costs claimed by the second applicant. As regards postage costs, the Government submitted that it is not clear whether all the invoices and receipts in question relate to the present case.

159. 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 that connection, the Court cannot accept the contract submitted by the second applicant concerning the legal cooperation between the applicants' representative and another lawyer as a basis for legal services in the proceedings before the Court. The Court further observes that the applicants submitted translations of their applications and other documents relating to the domestic proceedings. The Court does not, however, consider that the translation of those documents was necessary for its proceedings (see *Allahverdiyev*, cited above, § 71, and *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 70, 12 November 2015). Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 4,000 covering costs under all heads.

C. Default interest

160. 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

1. *Holds*, unanimously, that the second applicant has standing to pursue the application in the first and third applicants' stead;

2. *Declares*, unanimously, the application admissible;

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

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

5. *Holds*, by four votes to three, that there has been a violation of Article 3 of the Convention under its substantive limb as regards the first applicant's ill-treatment between 2 and 17 February 2007;

6. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention under its substantive limb on account of the first applicant's deprivation of medical care between 2 and 17 February 2007;

7. *Holds*, unanimously, that there has been a violation of Article 3 of the Convention as regards the lack of an effective investigation of the first applicant's allegation of ill-treatment;

8. *Holds*, unanimously, that there has been no violation of Article 2 of the Convention in respect of the domestic authorities' failure to protect the right to life of the first applicant;

9. *Holds*, unanimously, that there has been a violation of Article 2 of the Convention in respect of the domestic authorities' failure to conduct an effective investigation into the circumstances of the death of the first applicant;

10. *Holds*, unanimously,

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

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

(ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the second applicant, in respect of costs and expenses;

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

11. *Dismisses*, unanimously, the remainder of the second applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President