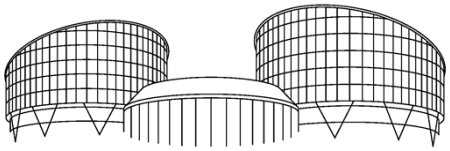

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF IBRAHIMOV AND MAMMADOV v. AZERBAIJAN

(Applications nos. 63571/16 and 5 others – see appended list)

JUDGMENT

Art 3 (substantive and procedural limbs) • Inhuman and degrading treatment • Police ill-treatment with a view to forcing the applicants to confess to serious charges • Lack of effective investigation Art 5 § 1 (c) • Reasonable suspicion • Minimum standard of "reasonableness" of suspicion not met in view of applicant's status, sequence of events, investigations and authorities' conduct Art 5 § 4 • Review of lawfulness of detention • Systemic failure on the part of domestic courts to protect against arbitrary arrest and continued pre-trial detention Art 18 (+ Art 5) • Restriction for unauthorised purposes • Detention of opposition activists in order to punish them for painting anti-government graffiti on statue of former president Art 10 • Freedom of expression • Grossly arbitrary prosecution for drug-related crimes in retaliation for political expression

STRASBOURG

13 February 2020

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

In the case of Ibrahimov and Mammadov v. Azerbaijan,

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

Síofra O'Leary, *President,*
Gabriele Kucsko-Stadlmayer,
André Potocki,
Yonko Grozev,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 21 January 2020,

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

PROCEDURE

1. The case originated in six applications 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 two Azerbaijani nationals, namely, applications nos. 63571/16, 2890/17, 39541/17 by Mr Giyas Hasan oglu Ibrahimov (*Qiyas Həsən oğlu Ibrahimov* – "the first applicant") and applications nos. 74143/16, 2883/17 and 39527/17 by Mr Bayram Farman oglu Mammadov (*Bayram Fərman oğlu Məmmədov* – "the second applicant") ("the applicants"), on various dates (see Appendix).

2. The applicants were represented by Mr E. Sadigov and Ms Z. Sadigova, lawyers based in Azerbaijan. The second applicant was also represented later on by Ms J. Gavron, Ms R. Remezaite and Ms K. Levine, lawyers based in London, in relation to application no. 2883/17 (see Appendix). The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Əsgərov.

3. The applicants alleged, in particular, under Articles 3, 5, 10 and 18 that they had been subjected to ill-treatment and torture in police custody and that their prosecution, arrest and pre-trial detention had been carried out in bad faith for purposes other than those prescribed in the Convention.

4. On 9 April 2018 notice of the applications was given to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASES

5. The first and second applicants were born in 1994 and 1995 respectively and lived in Baku at the material time.

A. Background information

6. At the time of the events the first and second applicants were fourth-year students at Baku Slavic University's Faculty of Journalism and Faculty of Translation respectively.

7. Both applicants are members of the Nida civic movement ("NIDA"). NIDA is a non-governmental organisation established by a group of young people in February 2011. According to its manifesto, NIDA pursues liberty, justice, truth and change in Azerbaijan; it rejects violence and uses only non-violent methods of protest. Its members have been actively involved in the organisation and conduct of a number of peaceful demonstrations in Baku. In particular, in January and March 2013 a number of demonstrations were held in Baku to protest against the death of soldiers in the Azerbaijani army. Following those demonstrations, a number of NIDA members were arrested and prosecuted for various crimes. In the context of those proceedings the Prosecutor General's Office and the Ministry of National Security made a joint public statement in which they portrayed NIDA as part of "radical destructive forces" (see *Rashad Hasanov and Others v. Azerbaijan*, nos. 48653/13 and 3 others, §§ 122-123, 7 June 2018).

B. Criminal proceedings against the applicants

1. The applicants' arrest and alleged ill-treatment

(a) The applicants' account

(i) Spraying graffiti on the statue of Heydar Aliyev

8. Mr Heydar Aliyev, who was born on 10 May 1923, was the former president of the Republic of Azerbaijan. He was also the father of the current president of the country, Mr Ilham Aliyev.

9. Between 2004 and 2016 the date of 10 May, which coincides with the birthday of Mr Heydar Aliyev, was celebrated in Azerbaijan as "Flower day" (*Gül bayramı*), during which floral displays were featured in public parks across the country. In Baku these floral decorations were set in front of the statue of Heydar Aliyev, which stands in a public park next to the Heydar Aliyev Palace.

10. On the night of 9 to 10 May 2016 the applicants, in order to express their opposition to the government, sprayed graffiti on the statue of Heydar Aliyev and afterwards disseminated photographs thereof on social networks, which were also reproduced by some online media. The photographs, as submitted by the applicants, showed the statue plinth daubed in graffiti with the words in English "F..k the system" on the frontal side; on the lateral side of the statue plinth was the slogan in Azerbaijani "Happy slave day" (*Q**u**l bayramınız mübarək)*; and the last slogan was a play on words for "Happy flower day" (*G**ü**l bayramınız mübarək)*.

(ii) Mr Giyas Ibrahimov's arrest, search and alleged ill-treatment

11. According to the first applicant, at around 3 p.m. on 10 May 2016 while leaving the campus of Baku Slavic University he was apprehended by several men in plain clothes. The men approached the applicant and administered two heavy blows to his head, which knocked him down. They grabbed him and forced him into a van. While on their way the men asked the first applicant about painting graffiti on the statue and continued to beat him. They also abused him verbally and threatened him with rape.

12. The first applicant was taken to a room in the Baku Main Police Department ("the BMPD") where the beatings continued. According to the first applicant, he received punches to all parts of his body, including slaps to the head and neck, after which he fainted. Officers poured water on him to make him regain consciousness and told him that they had called two attesting witnesses in order to seize drugs from his person. They then took something from the left pocket of his jacket. The first applicant told the officers that the drugs did not belong to him and that they had been planted while he was unconscious. In response, the officers started to beat him again, which lasted for several minutes.

13. Afterwards, the first applicant was taken to another room, where he saw the second applicant being beaten by other officers (see paragraph 23 below). The second applicant was taken out of the room and the men continued to beat the first applicant, demanding that he make a public apology in front of television cameras for painting graffiti on the statue of Heydar Aliyev. The applicant refused. The officers then told the first applicant that he had to confess to the drugs charges. When the first applicant refused to do that as well, they hit him and took off his trousers. They showed him a rubber truncheon and threatened to rape him with it. Being frightened, the applicant agreed to accept the charges. The officers told the applicant that they would also search his flat and find more drugs there and he would have to confess to possession of whatever they found there.

14. The officers drove the applicant to the one-room flat where he lived with his mother. Once there, about seventeen officers grabbed the first applicant and burst into the flat. The applicant's mother was at home and the officers told her that the first applicant was accused of drug trafficking. The first applicant saw that his mother looked unwell and told her not to worry and that he had been arrested for political reasons. At this point the applicant's mother noticed that a cushion on her bed had been moved and something had been placed underneath. The officers started to ask the first applicant where he hid drugs and which of the two beds belonged to him. At that point the first applicant's mother replied that they knew where the drugs were hidden because they had just planted them there themselves, but they had mistakenly hidden the drugs in her bed instead of that of her son. Then one of the officers approached his mother's bed, pushed the cushion and a

parcel fell on the ground. There were no attesting witnesses and no lawyer present. The officers seized the parcel and, without further searching the flat, took the first applicant and left. They put the first applicant in the van and drove back to the BMPD. During the drive the officers beat him again and spat in his face.

15. Once back at the BMPD, the officers continued to beat the first applicant and forced him to write an explanatory note (*izahat*) dictated by them, confessing to the drug charges. The officers told the applicant to indicate in the note that he had bought the drugs from an Iranian national named "Akram".

16. Afterwards, the first applicant was handcuffed and taken to the office of Mr M.S., the head of the BMPD. The latter told the applicant that everyone should kneel before him and one of the officers kicked the applicant from behind. As a result, the applicant fell on his knees and when he tried to stand up, an officer standing by M.S. ordered his colleagues to take off the applicant's belt. The men, grabbing the applicant's hair and beard, took off his belt and started to beat him with it. They asked who had ordered him to paint graffiti on the statue, who had been his accomplices and why he had done that. The applicant replied that he had painted graffiti in order to demand democracy in the country. His beatings continued for about an hour.

17. Thereafter, the officers transferred the first applicant to the temporary detention facility of the Narimanov District Police Office ("the NDPO"). Once there, a police officer to whom others referred as "chief" told the applicant "So, it was you who painted the statue", and then hit him. The applicant fell down and other officers started to kick him, as result of which he lost consciousness. He was then dragged to a cell.

18. On the following morning, 11 May 2016, the first applicant was taken to the yard of the facility and ordered to clean it. When he refused, officers beat him. He was thus forced to sweep up cigarette butts in the yard. Later the same day, officers forced him – again by hitting him – to clean the facility toilet. While he was cleaning it, they laughed and took photographs of him with their mobile phones.

19. On 12 May 2016 the first applicant – together with the second applicant (see paragraph 27 below) – was forced again to clean the yard. At about 10.30 a.m. on that day, Mr Sadigov, the applicants' lawyer, went to the temporary detention centre to visit the applicants. When the lawyer approached the yard of the facility, he saw officers beating both applicants to force them to sweep up cigarette butts in the yard. This was done under the supervision of an officer to whom others referred as "chief". When the applicants' lawyer protested against such treatment of the applicants and demanded that it stop, the so-called "chief" ordered other officers to escort him off the premises. Despite his repeated requests to meet the applicants, he was not allowed to do so.

20. At about 4 p.m. the same day, the first applicant was taken to the Khatai District Court for a decision on the preventive measure of restraint to be applied pending trial. He was able to meet his lawyer, Mr Sadigov, for the first time shortly before the hearing. During the hearing the first applicant complained to the court about his ill-treatment and torture and the extraction of his confession under such treatment. The court instructed the prosecutor in charge of the case to investigate the applicant's allegations. Following the hearing, the applicant was taken back to the temporary detention facility of the NDPO, where his ill-treatment continued until his transfer to the Baku pre-trial detention facility at about 5 p.m. on 13 May 2016.

21. On 16 May 2016 the first applicant met his lawyer in the detention facility. The lawyer witnessed injuries on the first applicant's body. The first applicant gave him a detailed account of his ill-treatment and asked him to disseminate that information through the press, which the lawyer did.

(iii) Mr Bayram Mammadov's arrest, search and alleged ill-treatment

22. According to the second applicant, at around 2 to 3 p.m. on 10 May 2016 he was apprehended in the street next to his home by three men in plain clothes. By using force against him, the men put him into a jeep and took him to police station no. 12 of the Sabunchu district. On the way the men asked him about painting graffiti on the statue of Heydar Aliyev, verbally abused and punched him. He was taken to the office of the head of the police station, where around seven to eight men kicked, punched and slapped him.

23. Afterwards, the second applicant was transferred to the BMPD, where he was told to confess to drug charges. When he refused, officers started to beat and verbally abuse him. Then they took off his trousers and, showing him a rubber truncheon, threatened to rape him with it. Being frightened, the applicant agreed to accept the charges and wrote an explanatory note (*izahat*) dictated by an officer, confessing to drug trafficking. The officers also demanded that the second applicant make a public apology for painting graffiti on the statue. He refused, and the beatings continued.

24. In the evening of the same day, police officers took the second applicant to the flat where he lived with his parents. Several officers proceeded directly to his bedroom, where the second applicant alleges they planted a parcel containing drugs behind his computer. There were no attesting witnesses and no lawyer present. The officers seized the parcel and left, taking the second applicant with them.

25. At about half past midnight the second applicant was transferred to the temporary detention facility of the NDPO.

26. On the following morning, 11 May 2016, the second applicant was ordered by a person called "chief" to clean the yard of the facility. When he

refused, the so-called "chief" slapped and punched him, and threatened him with rape with a truncheon. The second applicant was thus obliged to clean the yard and while he was sweeping it, officers took photographs of him.

27. On the morning of 12 May 2016 the second applicant – together with the first applicant – was beaten and forced to clean the yard again, which was witnessed by their lawyer (see paragraph 19 above). At about 2 p.m. the second applicant was taken to the Khatai District Court, which was to decide on the preventive measure of restraint to be applied pending trial. He met his lawyer, Mr Sadigov, for the first time shortly before the hearing. During the hearing the applicant complained to the court that he had been ill-treated and tortured by the police and that his confession had been extracted under such treatment. The court ordered the prosecutor in charge of the case to investigate the applicant's allegations of ill-treatment. After the hearing, the second applicant was transferred back to the temporary detention centre of the NDPO. He was taken to the office of the head of the facility, where there were also two men in plain clothes. They asked him again about the graffiti on the statue and told him that if he apologised publicly before the statue in front of television cameras, they would release him. The applicant refused and the head of the facility told other officers: "Take him and work on him a bit".

28. The second applicant was taken to another room downstairs, where officers shackled his legs and handcuffed his hands behind his back and started to punch and kick him, and hit him with a truncheon. When he began to scream with pain, they stuck adhesive tape over his mouth. Then they decided to remove the handcuffs from his hands and legs because the second applicant presumed they wished to ensure no marks were left. They bound his legs and hands with adhesive tape and laid him face down. One of the officers sat on his back and kept his legs tight, while other officers started to apply "falaka" by striking the soles of his feet with truncheons. They then put him in a standing position with his legs and hands bound and pushed him down onto the floor. They did this four or five times before the tape on his hands ripped. They then stepped on his hands and smashed them while another officer continued to strike the soles of his feet. Afterwards, they pulled him up and administered truncheon blows to his chest and knees. Once the officers became tired, they laid him on his back on the floor, put a sheet of paper on his face and told him that if it fell down they would beat him. Each time the paper moved, they hit him. After a while, the officers ordered the second applicant to clean the toilet in the detention centre. The applicant refused and was beaten again until he lost consciousness. Officers poured water on him and dragged him to a cell.

29. On 16 May 2016 the second applicant met his lawyer in the pre-trial detention facility. The lawyer witnessed injuries on his body. The second applicant gave him a detailed account of his ill-treatment and asked him to disseminate the information through the press, which the lawyer did.

(b) The Government's account

30. According to the Government, prior to the applicants' arrest, the police had received operational information about their involvement in drug trafficking. With a view to verifying that information, on 10 May 2016 the police decided to conduct operational search measures in respect of the applicants. Following the applicants' arrests as suspects, their rights were explained to them and they signed the relevant records in this regard. On the date of their arrest, they were provided with State-funded lawyers and were interrogated as suspects in their presence. The search of the applicants' flats was carried out with their consent and in the presence of attesting witnesses. Following the operational search measures carried out, material evidence, namely drugs, was collected. Based on the evidence gathered, the applicants were formally charged under the relevant articles of the Criminal Code.

31. At about midnight of 10 to 11 May 2016 both applicants underwent medical examinations at the police station and no traces of any injuries were found on them.

32. On 26 May 2016 the applicants underwent forensic medical examinations. According to the medical reports dated 30 May 2016 the applicants did not have any injuries on their bodies.

33. The criminal investigation carried out by the authorities did not find any evidence to support the applicants' allegations of ill-treatment.

2. The applicants' visit by the UN Working Group on Arbitrary Detention

34. The United Nations Working Group on Arbitrary Detention carried out a visit to Azerbaijan from 16 to 25 May 2016. During their visit, they met the applicants in the Baku pre-trial detention facility.

35. On 26 May 2016, following their visit, the Working Group issued a statement concerning their preliminary findings. The relevant part read as follows:

> "The United Nations Working Group on Arbitrary Detention was invited by the Government of Azerbaijan to conduct a country visit from 16 to 25 May 2016. ...
>
> ... The observations we are presenting today constitute the preliminary findings which will serve as the basis of the forthcoming deliberations followed by the report that the Working Group will officially adopt and submit to the Human Rights Council at its September 2017 session ...
>
> **IV. Arbitrary detention in the context of the exercise of human rights or fundamental freedoms guaranteed by international norms**
>
> During its visit, the Working Group could observe the severe limitations placed on the work of human rights defenders, journalists, political opponents and religious leaders. ...
>
> The most recent example in this respect was the arrest on 10 May 2016 of two students who reportedly drew a graffiti 'Happy Slave Day' on a statue of the former

president of Azerbaijan, in Baku centre, as a political protest. Both reported having been subjected to violent interrogation techniques at a police station before being **placed by the Khatai District Court under a four-month pre-trial detention for drug-related charges. The Working Group could visit the two students in Kurdahani pre-trial detention facility and observed what seemed to be physical sequels of such treatment**."

36. The final report (dated 2 August 2017) on the Working Group's visit was presented to the Human Rights Council at its thirty-sixth session (11-29 September 2017). The part concerning the applicants read as follows:

"81. ... the Working Group was informed that on 10 May 2016, two students were arrested shortly after they drew graffiti on a statue of the former President of Azerbaijan in the centre of Baku, reportedly as a form of political protest. Both have subsequently faced drug-related charges and were reported to have been subjected to violent interrogation techniques at a police station before being placed by the Khatai District Court under pretrial detention for a period of four months. The Working Group visited the two students in the Kurdakhani Pretrial Detention Facility and observed possible physical sequels of such ill-treatment, in the form of visible marks on parts of their bodies."

37. The Azerbaijani Government submitted their comments (dated 21 August 2017) on the above-mentioned report to the Human Rights Council. Their comments concerning the findings of the Working Group with respect to the applicants read as follows:

"Paragraph 81:

Persons detained due to illicit drug trafficking envisaged in the Criminal Code of the Republic of Azerbaijan, Mr. Giyas Hasan oghlu Ibrahimov and Mr. Bayram Farman oglu Mammadov were admitted on 13.05.2016 to Baku pretrial detention facility of the Penitentiary Service. During admission to the establishment and during detention, their complaints concerning the exposure to the physical and psychological pressures by the staff of the establishment and condition of detention were not received and their rights and freedoms were fully ensured. Right to meeting with their advocates, also close ones, right to phone calls and right to receive parcels were ensured."

3. Criminal investigation into the applicants' alleged involvement in drug trafficking

38. The Government were requested to provide all the documents related to the investigative measures carried out by the relevant authorities and the evidence collected within the framework of criminal investigations against the applicants. In reply to the Court's request, they furnished various documents, indicating that they were submitting "copies of all relevant records pertaining to any procedural steps taken". The documents provided by the Government are set out below.

(a) Mr Giyas Ibrahimov

39. On 10 May 2016, Mr P.M., an operational officer from the Department on Combating Drug Trafficking of the BMPD, submitted the following report to his superior:

> "[I] report that [according to] information received by means of undercover operations, a person, named 'Giyas' is involved within the territory of Baku in illicit trafficking of narcotic substances on a regular basis, carries [them] on himself and stores [them] at his home[.] [I] ask you to authorise forming an operational team and carrying out relevant operational measures in order to verify [this] information."

40. On the same date Mr P.M., with the approval of his superior, issued the following decision:

> "DECISION
>
> (on the conduct of operational search measures)
>
> ...
>
> I, [Mr P.M.], [official position and rank], having considered the materials collected based on the operational information received concerning illicit trafficking of narcotic substances in Baku by its resident, named 'Giyas',
>
> ESTABLISHED:
>
> Operational information was received concerning illicit trafficking of narcotic substances in Baku by its resident, named 'Giyas'.
>
> [As] it is not possible to identify a person named 'Giyas' by other means of inquiry, it is necessary to carry out a number of operational search measures provided for by the Law on Operational Search Activities in order to establish [facts related to] the commission of the criminal acts and other circumstances which could be of operational interest and to carry out the arrest *in flagrante delicto*.
>
> In view of the above, in accordance with [the relevant provisions of the Law on Operational Search Activities and the Code of Criminal Procedure],
>
> I DECIDED:
>
> 1. To carry out the measures provided for by paragraphs 1 [questioning of persons] and 2 [making of enquiries] of part 1 of Article 10 of the Law on Operational Search Activities in order to establish the full identity of the person named 'Giyas', his exact residential address, the locations of his illicit trafficking of narcotic substances and the source from which he acquired the narcotic substances;
>
> 2. After establishing [the above], depending on the conditions during the [operational] measures, to carry out surveillance of [his] vehicle, the surroundings of the building [where he lives] and of the locations [which he could visit] and to conduct an inspection of his person, his vehicle and his apartment in accordance with paragraphs 7 [inspection of vehicles], 8 [inspection of buildings and places of residence] and 9 [surveillance of buildings, places of residence and vehicles] of part 1 of Article 10 of the Law on Operational Search Activities;
>
> 3. In accordance with part 4 of Article 14 [use of photographic, audio, video and other technical devices during the conduct of operational search measures] of the Law on 'Operational search activities', depending on the conditions, to use audio, photographic, video and other technical devices;

4. If the need arises during the conduct of the [operational] measure, to continue [to carry out this measure] bearing in mind other operational measures provided for by the Law on Operational Search Activities;

5. After the conduct of the measure, to forward within 48 hours a reasoned decision on the operational search measures carried out to the court exercising judicial control and the prosecutor exercising procedural supervision of the preliminary investigation."

41. On the same date following the first applicant's arrest, the following record was drawn up:

"RECORD

(on the conduct of an operational measure and collection of evidence)

We, [Messrs P.M. and E.K., operational officers from the Department on Combating Drug Trafficking of the BMPD, Messrs S.A., B.N., I.A., Ch.S., and R.A, operational officers from police station no. 22 of the Nasimi district] and [the following] attesting witnesses invited [by the operational officers] in accordance with [the relevant provisions of the Code of Criminal Procedure] ... :

1. [Mr M.A.], [date and place of birth and residence];

2. [Mr I.M.], [date and place of birth and residence];

Prepared the present record with the participation of [the State-funded lawyer, Mr O.M.] to attest that in May 2016 the Department for Combating Drug Trafficking of the [BMPD] received operational information that a person named 'Giyas' was involved in illicit drug trafficking within the territory of Baku. In order to verify the information received the officers indicated above formed an operational team. At about 7 p.m. on 10 May 2016 the members of the team arrived near a building at [address of the location] and prepared for an on-the-spot operation. While they were there, they saw a man with external characteristics corresponding to [those] of the person named 'Giyas', who was walking in front of the building[.] They approached this person, arrested him and brought him to the administrative building of the Department on Combating Drug Trafficking of the [BMPD].

The person, whose identity became known afterwards, [namely] Mr Giyas Hasan oglu Ibrahimov [date of birth], was subjected to an inspection in one of the service offices of the Department on Combating Drug Trafficking of the [BMPD]. During the inspection, a small plastic bag containing a substance resembling the narcotic substance heroin was found in the left pocket of his khaki coloured jacket and seized. During questioning, Giyas Ibrahimov stated that the substance contained in the bag was the narcotic substance heroin and that it was a part of [heroin] which he had bought about four days earlier from an Iranian national, whose name he did not remember. In addition, Giyas Ibrahimov stated that he had hidden and stored the remaining part of heroin at his home address and was willing to voluntarily hand it over.

The substance resembling the narcotic substance heroin, which was found on Giyas Ibrahimov and seized, was packed and sealed with stamp number 227 of the Ministry of the Interior and signed by the attesting witnesses and the arrested person.

The present record was prepared in the service office of the administrative building of the Department on Combating Drug Trafficking of the [BMPD], read out, confirmed and signed by all participants without any comments or additions."

42. On the same day, 10 May 2016, the authorities searched the first applicant's flat. The search was documented as follows:

"RECORD

(on the conduct of an operational measure and collection of evidence)

We, [Messrs P.M. and E.K., operational officers from the Department on Combating Drug Trafficking of the BMPD, Messrs S.A., B.N., I.A., Ch.S., and R.A, operational officers from police station no. 22 of the Nasimi district, Messrs B.Kh. and R.T., operational officers from police station no. 25 of the Nizami district] and [the following] attesting witnesses invited [by the operational officers] in accordance with [the relevant provisions of the Code of Criminal Procedure] ..:

1. [Mr M.A.], [date and place of birth and residence];

2. [Mr I.M.], [date and place of birth and residence];

Prepared the present record with the participation of [the State-funded lawyer, Mr O.M.] to attest that on 10 May 2016 Giyas Ibrahimov was arrested as a result of operational search measures and brought to the Department for Combating Drug Trafficking of the [BMPD][.] Following an inspection of his person, a small plastic bag containing a substance resembling the narcotic substance heroin was found in the left lateral pocket of his khaki coloured jacket and was seized. Mr Giyas Ibrahimov stated that the substance found on him was the narcotic substance heroin. In addition, Giyas Ibrahimov stated that he was willing to voluntarily hand over to the police heroin stored at his home address.

For this reason, the members of the operational team, the defence lawyer and attesting witnesses went to the apartment where Mr Giyas Ibrahimov lived at [address of the apartment]. There, the arrested person, Giyas Ibrahimov, showed a red parcel under the mattress of his bed and stated that the parcel contained the narcotic substance heroin.

The parcel shown by Mr Giyas Ibrahimov, which contained a substance resembling the narcotic substance heroin, was packed and sealed with stamp number 227 of the Ministry of the Interior and signed by the attesting witnesses and the arrested person.

The present record was prepared in the service office of the administrative building of the Department on Combating Drug Trafficking of the [BMPD], read out, confirmed and signed by all participants without any comments or additions."

43. On 10 May 2016 the investigator ordered a forensic chemical examination of the substance found on the first applicant and in his flat. According to the expert report of the same date, the small plastic bag and the parcel submitted for examination contained home-made heroin.

44. On 11 May 2016 Mr M.G., an investigator from the BMPD opened a criminal investigation (under file no. 160200051) against the first applicant. The decision reads as follows:

"DECISION

(on opening a criminal case and its processing)

I, [Mr M.G.], [official position and rank], having considered the materials collected concerning Giyas Hasan oglu Ibrahimov,

ESTABLISHED:

It can be seen from the materials collected that Giyas Hasan oglu Ibrahimov, upon prior agreement with a person unknown to the investigation, named 'Akram', an Iranian national, conspired [with the latter] and formed a group with a view to illegally acquiring, transporting and selling narcotic substances in large quantities[.] For this purpose, [the first applicant] on 5 May 2016 near metro station 'Neftchilar' [address of the metro station], in the Nizami district, Baku, illegally acquired, with intent to sell, heroin, a narcotic substance home-made from opium, in the quantity of 1 kg and 12.607 grams from a person named 'Akram', an Iranian national, in order to sell it and pay 24 manats for each gram to [the latter] in future[.] Giyas Hasan oglu Ibrahimov transported [the drug] and hid it in the apartment where he lived [address of the apartment][.] On the basis of the information received in this regard operational search measures were carried out by officers from the Baku Main Police Department and Nasimi district police station no.22[.] As a result Giyas Hasan oglu Ibrahimov was arrested at about 7 p.m. on 10 May 2016 near a building at [address of the location][.] His person was searched in the Baku Main Police Department and a small plastic bag containing the narcotic substance heroin in the quantity of 2.607 grams was found in the left lateral pocket of his jacket, while 1 kg and 10 grams was found in a red plastic parcel hidden under the mattress of his bed in his apartment located at [address of the apartment].

As the materials collected [show that] the actions of Giyas Hasan oglu Ibrahimov and others contain elements of the crime provided for by Article 234.4.1 and 234.4.3 of the Criminal Code of the Republic of Azerbaijan, it is necessary to open a criminal case and assign [the case] to my management for carrying out a criminal investigation.

Having regard to the above and [the relevant provisions of the Code of Criminal Procedure],

I DECIDED:

1. To open a criminal case against Giyas Hasan oglu Ibrahimov and others in relation to the fact described [above] under Articles 234.4.1 and 234.4.3 of the Criminal Code of the Republic of Azerbaijan and to assign [the case] to my management for carrying out a criminal investigation.

2. To forward a copy of the decision to the prosecutor exercising procedural supervision of the preliminary investigation."

(b) Mr Bayram Mammadov

45. On 10 May 2016, Mr Sh.B, operational officer from the Department on Combating Drug Trafficking of the BMPD, submitted the following report to his superior:

"[I] report that [according to] information received by means of undercover operations, a person named 'Bayram' is involved, within the territory of the Sabunchu district of Baku, in illicit trafficking of narcotic substances on a regular basis, carries [them] on himself and stores [them] at his home[.] [I] ask you to authorise forming an operational team and carrying out relevant operational measures in order to verify [this] information."

46. On the same date Mr Sh.B., with the approval of his superior, issued the following decision:

"DECISION

(on the conduct of operational search measures)

...

I, [Mr Sh.B.], [official position and rank], having considered the materials collected based on the operational information received concerning illicit trafficking of narcotic substances in Baku by its resident, named 'Bayram',

ESTABLISHED:

Operational information was received concerning illicit trafficking of narcotic substances in Baku by a resident named 'Bayram'.

[As] it is not possible to identify a person named 'Bayram' by other means of inquiry, it was necessary to carry out a number of operational search measures provided for by the Law on Operational Search Activities in order to establish [facts related to] the commission of the criminal acts and other circumstances which could be of operational interest and to carry out the arrest *in flagrante delicto*.

In view of the above, in accordance with [the relevant provisions of the Law on Operational Search Activities and the Code of Criminal Procedure],

I DECIDED:

1. To carry out the measures provided for by paragraphs 1 [questioning of persons] and 2 [making of enquiries] of part 1 of Article 10 of the Law on Operational Search Activities in order to establish the full identity of the person named 'Bayram', his exact residential address, the locations of his illicit trafficking of narcotic substances and the source from which he acquired the narcotic substances;

2. After establishing [the above], depending on the conditions during the [operational] measures, to carry out surveillance of [his] vehicle, the surroundings of the building [where he lives] and of the locations [which he could visit] and to conduct an inspection of his person, his vehicle and his apartment in accordance with paragraphs 7 [inspection of vehicles], 8 [inspection of buildings and places of residence] and 9 [surveillance of buildings, places of residence and vehicles] of part 1 of Article 10 of the Law on Operative Search Activities;

3. In accordance with part 4 of Article 14 [use of photographic, audio, video and other technical devices during the conduct of operational search measures] of the Law on Operational Search Activities, depending on the conditions, to use audio, photographic, video and other technical devices;

4. If the need arises during the conduct of the [operational] measure, to continue [to carry out this measure] bearing in mind other operational measures provided for by the Law on Operational Search Activities;

5. After the conduct of the measure, to forward within 48 hours a reasoned decision on the operational search measures carried out to the court exercising judicial control and the prosecutor exercising procedural supervision of the preliminary investigation."

47. On the same date, following the second applicant's arrest, the following record was drawn up:

"RECORD

(on the conduct of an operational measure and collection of evidence)

We, [Messrs B.A. and N.O., officers from the Department on Combating Drug Trafficking of the BMPD, Messrs Y.A., R.A. and R.A, officers from police station no. 12 of the Sabunchu district] and [the following] attesting witnesses invited [by the operational officers] in accordance with [the relevant provisions of the Code of Criminal Procedure] ... :

1. [Mr S.J.], [date and place of birth and residence];

2. [Mr N.G.], [date and place of birth and residence];

Prepared the present record with the participation of [the State-funded lawyer, Mr B.B.] to attest that in May 2016 the Department for Combating Drug Trafficking of the [BMPD] received operational information that a person named 'Bayram' was involved in illicit drug trafficking within the territory of Baku. In order to verify the information received, the officers indicated above formed an operational team. At about 3 p.m. on 10 May 2016 the members of the team arrived at the street in the Sabunchu district [address of the location] and prepared for an on-the-spot operation. While they were there, they saw a man with external characteristics corresponding to [those] of the person named 'Bayram', who was walking in the street [name of the street corresponds to the applicant's home address][.] They approached this person, arrested him and took him to the administrative building of the Department on Combating Drug Trafficking of the [BMPD].

The person, whose identity became known afterwards, [namely] Mr Bayram Farman oglu Mammadov [date of birth], was subjected to an inspection in one of the service offices of the Department on Combating Drug Trafficking of the [BMPD]. During the inspection, the arrested person, Bayram Mammadov, [took out] from the right rear pocket of his blue-coloured jeans a small plastic bag containing a substance resembling the narcotic substance heroin and voluntarily handed it over[.] [He] stated that the substance contained in the bag was the narcotic substance heroin and that it was part of the [heroin] which he had bought about five to six months earlier from an Iranian national, whose name he did not remember. In addition, Bayram Mammadov stated that he had hidden the remaining part of the heroin and stored it at his home address and was willing to voluntarily hand it over.

The substance resembling the narcotic substance heroin, which was found on Bayram Mammadov and seized, was packed and sealed with stamp number 227 of the Ministry of the Interior and signed by the attesting witnesses and the arrested person.

The present record was prepared in the service office of the administrative building of the Department on Combating Drug Trafficking of the [BMPD], read out, confirmed and signed by all participants without any comments or additions."

48. On the same day the authorities searched the second applicant's flat. The search was documented as follows:

"RECORD

(on the conduct of an operational measure and collection of evidence)

We, [Messrs B.A. and N.O., operative officers from the Department on Combating Drug Trafficking of the BMPD, Messrs N.V., Y.A., R.A. and B.A., operational officers from police station no. 12 of the Sabunchu district, Messrs B.Kh. and R.T., operational officers from police station no. 25 of the Nizami district] and [the

following] attesting witnesses invited [by the operational officers] in accordance with [the relevant provisions of the Code of Criminal Procedure] ... :

1. [Mr S.J.], [date and place of birth and residence];

2. [Mr N.G.], [date and place of birth and residence];

Prepared the present record with the participation of [the State-funded lawyer, Mr B.B.] to attest that on 10 May 2016 Bayram Farman oglu Mammadov was arrested as a result of operational search measures and taken to the Department for Combating Drug Trafficking of the [BMPD][.] Following an inspection of his person, a small plastic bag containing a substance resembling the narcotic substance heroin was found in the right rear pocket of his blue-coloured jeans and was seized. Mr Bayram Mammadov stated that the substance found on him was the narcotic substance heroin. In addition, Bayram Mammadov stated that he was willing to voluntarily hand over to the police heroin stored at his home address.

For this reason, the members of the operational team, the defence lawyer and attesting witnesses went to the house where Bayram Mammadov lived [address of the house]. There, the arrested person, Bayram Mammadov went into his bedroom and showed a black plastic parcel [which was kept] behind the processor box of the computer [which was] on the desk in that room[.] He stated that the substance in the parcel was the narcotic substance heroin.

The parcel which was shown by Mr Bayram Mammadov and which contained a substance resembling the narcotic substance heroin was packed and sealed with stamp number 227 of the Ministry of the Interior and signed by the attesting witnesses and the arrested person.

The present record was prepared in the service office of the administrative building of the Department on Combating Drug Trafficking of the [BMPD], read out, confirmed and signed by all participants without any comments or additions."

49. On 10 May 2016 the investigator ordered a forensic chemical examination of the substance found on the second applicant and in his flat. According to the expert report of the same date, the plastic bag and plastic parcel submitted for examination contained home-made heroin.

50. On 11 May 2016 Mr H.H., an investigator from the BMPD, opened a criminal investigation (under file no.160200052) against the second applicant. The decision reads as follows:

"DECISION

(on opening a criminal case and its processing)

I, [Mr M.G.], [official position and rank], having examined the materials received from the [Department for Combating Drug Trafficking of the BMPD],

ESTABLISHED:

It can be seen from the materials collected that Bayram Farman oglu Mammadov, on a date unknown to the investigation and upon prior agreement with a person unknown to the investigation, conspired [with the latter] to form a group and illegally acquire the narcotic substance heroin in large quantities with an intent to sell and stored it on himself[.] At about 3 p.m. on 10 May 2016 [the second applicant] was arrested in the street at [address of the location] by officers from the Department for Combating Drug Trafficking of the [BMPD][.] Following a search of [the second

applicant's] person in one of the service offices in the administrative building of the [BMPD], a small plastic bag containing the narcotic substance heroin in the quantity of 2.904 grams was found in the right rear pocket of his jeans[.] Moreover, following a search of the apartment where [the second applicant] lived, located at [address of the apartment], a black plastic parcel containing heroin in the quantity of 1.150 grams was found behind the processor box of the computer [which was] on the desk in his bedroom and seized[.]

Taking into account the existence of elements of the crime provided for by Article 234.4.1 and 234.4.3 of the Criminal Code of the Republic of Azerbaijan in the materials collected, it is necessary to open a criminal case into this fact under the above Article and assign [the case] for carrying out a criminal investigation.

Having regard to the above and [the relevant provisions of the Code of Criminal Procedure],

I DECIDED:

1. To open a criminal case into the fact described [above] under Articles 234.4.1 and 234.4.3 of the Criminal Code of the Republic of Azerbaijan and to assign [the case] for carrying out a criminal investigation.

2. To forward a copy of the decision to the prosecutor exercising procedural supervision of the preliminary investigation."

4. The applicants' pre-trial detention

51. On 12 May 2016 the prosecuting authorities applied to the Khatai District Court requesting the applicants' detention pending trial. On the same date the District Court held in turn separate hearings in the applicants' cases. According to the relevant transcripts, the hearing on the second applicant's case took place between 2.30 p.m. and 3 p.m. and the hearing on the first applicant's case took place between 3.30 p.m. and 4 p.m. During the respective hearings both applicants, assisted by their lawyer, Mr Sadigov, complained that the criminal charges against them had been fabricated in order to punish them for painting graffiti on the statue of Heydar Aliyev. In particular, they stated that the police officers had planted drugs on them and in their flats and had subjected them to ill-treatment and torture in order to extract their confessions to crimes they had not committed.

52. By decisions of the same date the Khatai District Court ordered both applicants' detention for a period of four months. It justified the application of remand in custody by the seriousness of the charges and the risks that if released, the applicants might abscond or reoffend. In its decisions the District Court instructed the Baku prosecutor's office to verify the applicants' allegations of ill-treatment. The applicants' complaints about the planting of evidence and the ulterior motive for their detention were left unanswered by the court.

53. On 14 May 2016 the applicants appealed against the detention orders and reiterated their complaints. They requested the appellate court to order

their immediate release because of the political motives for their arrest and prosecution.

54. While the applicants' appeals against the detention orders were pending, on 16 May 2016 they applied to the Khatai District Court requesting that the measure of remand in custody be substituted with either house arrest or release on bail.

55. By decisions of 19 May 2016 the Baku Court of Appeal dismissed the applicants' appeals against the detention orders of 12 May 2016. The applicants' complaints as regards the political motives for their arrest and prosecution remained unanswered by the appellate court.

56. On 20 May 2016 the Khatai District Court dismissed the applicants' requests for release pending trial finding that if released the applicants might abscond or reoffend. The court's decisions were upheld on appeal on 26 May 2016.

57. On 8 September 2016 the first applicant's case went to trial. He was remanded in custody pending trial.

58. On 6 September 2016 the Khatai District Court extended the second applicant's detention for a period of two months. That decision was upheld on appeal on 14 September 2016.

59. On 20 September 2016 the second applicant applied again to the Khatai District Court requesting that the measure of remand in custody be substituted with either house arrest or release on bail.

60. On 23 September 2016 the Khatai District Court refused to examine the applicant's application on the merits because the grounds he had relied on were similar to those put forward in his application of 16 May 2016. That decision was upheld on appeal on 14 October 2016.

61. On 4 November 2016 the second applicant's case went to trial. He was also remanded in custody pending trial.

5. Proceedings concerning the lawfulness of the searches

62. On various dates the applicants lodged complaints with the domestic courts, claiming that their personal searches and the searches of their flats had been unlawful. They complained, among other things, that the drugs found as a result of those searches had been planted by police officers in order to punish them for painting graffiti on the statue.

63. On 5 August 2016 the Nizami District Court, relying on the records concerning the first applicant's personal search and the search of his apartment, dismissed his complaint and found the searches lawful. The decision was upheld on appeal on 12 October 2016.

64. On 13 October 2016 the Sabunchu District Court found the second applicant's complaint unfounded. The decision was upheld on appeal on 2 November 2016.

65. In neither case were the applicants' complaints about the planting of evidence in retaliation for painting graffiti on the statue addressed by the domestic courts.

C. Criminal inquiry into the applicants' alleged ill-treatment

66. On 12 may 2016 the Khatai District Court instructed the Baku prosecutor's office to carry out an inquiry into the applicants' allegations of ill-treatment (see paragraph 52 above).

67. On 16 May 2016 the applicants' lawyer lodged a request with the General Prosecutor's Office in relation to the applicants' ill-treatment. He submitted, in particular, that he had witnessed himself their ill-treatment on 12 May 2016. He specified that on that day he had gone to the temporary detention centre of the NDPO to visit the applicants and had seen police officers beating them and forcing them to clean the exercise yard of the detention centre and to collect cigarette butts. This had been done under the supervision of a person of medium height, aged between 40 and 45, to whom everyone referred as "chief". The lawyer indicated that the applicants' ill-treatment had been captured by surveillance cameras on the premises of the temporary detention centre and the NDPO. He asked the prosecuting authorities to secure the video recordings from those cameras for the period between 10 and 13 May 2016. There is no information as to whether the applicants' lawyer received any response to his request.

68. On 25 May 2016 Mr P.Z., the head of the temporary detention centre of the NDPO, issued a "certificate" (*arayış*), presumably in reply to a request by the investigating authorities, stating that all the offices of the temporary detention centre were equipped with surveillance cameras but that it was not possible to provide the relevant recordings since the storage period of the video footage was limited to seven days, after which it was automatically erased.

69. On 27 May 2016 Mr P.Z. further submitted that following the applicants' admission to the temporary detention centre, they had undergone medical examinations which had not revealed any injuries on their bodies.

70. On 31 May 2016 Mr I.A., the head of the NDPO, informed the Baku prosecutor's office that the first and second applicants had been brought to the temporary detention centre of the NDPO at about 0:55 a.m. and 00:45 a.m. respectively on 11 May 2016 and that both applicants had been transferred to the Baku pre-trial detention facility at about 12:40 p.m. on 13 May 2016. Enclosed with the letter were extracts from the register of the temporary detention centre. The relevant parts of the logs with respect to the applicants read as follows:

No.	Name, surname, patronym of the admitted person, date of birth, time and	Injuries revealed during initial examination or person's complaints

	date of admission to the temporary detention centre	and measures taken
366	Giyas Hasan oglu Ibrahimov [date of birth] At 10:00 a.m. on 11 May 2016	Superficial redness on the left side of the neck
367	Bayram Farman oglu Mammadov [date of birth] At 10:20 a.m. on 11 May 2016	None

71. On 26 May 2016 the investigator ordered the applicants' forensic medical examination.

72. On 30 May 2016, the expert issued the forensic reports with respect to each applicant. According to the reports, which were both identical in substance, both applicants' forensic examinations were carried out between 26 and 30 May 2016. The reports did not specify the form and nature of examination carried out during that period. While referring to the applicants' allegations of ill-treatment and their medical records prepared in the temporary detention facility, the forensic reports were limited to indicating in an identical manner with respect to both applicants the following:

> "1. [The person] examined is [a man] of medium height, normal build and weight.
>
> 2. During examination no objective signs of injury were found on the body surface."

73. On unspecified dates the investigator questioned several police officers who had participated in the applicants' arrest and search, and those who had been on duty at the temporary detention centre during the applicants' detention. All the officers testified that they had not applied any physical force against the applicants or verbally abused them.

74. On 7 June 2016 the investigator issued separate decisions in respect of each applicant refusing to institute criminal proceedings in connection with the applicants' complaints of ill-treatment. Relying on the statements of the police officers, the forensic report and the applicants' medical records, the investigator concluded that the applicants' allegations were unfounded. The investigator was silent as regards the applicants' allegations that they had been subjected to ill-treatment in retaliation for painting graffiti on the statue.

75. On 30 August 2016 the applicants challenged the investigator's decisions before the Sabail District Court. They complained that the investigator had failed to secure the footage from the surveillance cameras, to take into account the fact that the injuries on the applicants' bodies had been witnessed by their lawyer as well as by the members of the UN

Working Group on Arbitrary Detention, as well as to conduct a confrontation between the applicants and the police officers concerned.

76. By decisions of 14 September 2016 the Sabail District Court found the investigator's decisions lawful without addressing the applicants' specific complaints. On 5 and 6 October 2016 the Baku Court of Appeal upheld the District Court's decisions.

D. The applicants' criminal conviction and their subsequent release

77. On 25 October and 8 December 2016 the Baku Assize Court convicted the first applicant and the second applicant respectively under Articles 234.4.1 and 234.4.3 of the Criminal Code and sentenced them to 10 years' imprisonment. In finding the applicants guilty, the court relied on the following evidence:

- the applicants' confessions given during their initial questioning by the police;
- the statements of the police officers involved in the applicants' arrests;
- the records concerning the applicants' arrests and personal searches and the searches of their flats;
- the statements of the attesting witnesses who had allegedly attended the applicants' personal searches and the searches of their flats; and
- the expert reports of 10 May 2016 concerning the type of drugs found on the applicants and in their flats.

78. The first applicant's conviction was upheld on 5 June 2017 by the Baku Court of Appeal and on 30 November 2017 by the Supreme Court. The second applicant's conviction was upheld on 10 February 2017 by the Baku Court of Appeal and on 20 June 2017 by the Supreme Court. The applicants' complaints about the fabrication of the criminal cases in order to punish them for painting graffiti on the statue of Mr Heydar Aliyev were left unanswered by the domestic courts at three levels of jurisdiction.

79. On 17 March 2019 both applicants were released and exonerated from serving the remainder of their sentences pursuant to a presidential pardon decree of 16 March 2019.

80. The first and second applicants' criminal trials are the subject of separate applications which are pending before the Court (applications nos. 34247/18 and 2353/18 respectively).

II. RELEVANT DOMESTIC LAW AND INTERNATIONAL REPORTS

81. A summary of the relevant domestic law, including most of the relevant provisions of the Criminal Code and the Code of Criminal Procedure, as well as extracts of the relevant international reports, may be found in *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, §§ 78-80,

20 September 2018). Further information on domestic law and international reports relevant to the present cases is summarised below.

A. Relevant domestic law

82. The relevant Articles of the Criminal Code ("the CC") provided as follows at the time of the events:

Article 234. Illicit manufacture, acquisition, possession, transportation, dispatch or sale of narcotic and psychotropic substances and precursors

"234.1. Illicit acquisition or possession of narcotic and psychotropic substances in a quantity exceeding that necessary for personal use without intent to sell

is punishable by imprisonment for a period of up to three years.

234.2. Illicit sale of narcotic and psychotropic substances or illicit acquisition, possession, manufacture, preparation, processing, transportation or dispatch of narcotic and psychotropic substances with intent to sell

is punishable by imprisonment for a period of three to seven years.

...

234.4. The commission of the [above] acts ...

234.4.1. by a group of persons in prior agreement or by an organised group;

...

234.4.3. in large quantities

is punishable by imprisonment for a period of five to twelve years. ..."

B. Reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") in respect of Azerbaijan

83. On 18 July 2018 the CPT published reports on six of its visits to Azerbaijan. The relevant parts of the CPT reports on their most recent visits are set out below.

1. *Report on the fourth periodic visit to Azerbaijan carried out by the CPT from 29 March to 8 April 2016 (footnotes, save for footnote 31, omitted):*

"...

2. Torture and other forms of ill-treatment

19. The delegation received very widespread allegations of recent physical ill-treatment of persons detained by law enforcement agencies (or who had recently been in their custody).

[Footnote 31]: "Reference should also be made here to two cases in which persons had publicly complained of severe ill-treatment/torture during and after the CPT's

visit. ... In the second case, Messrs B. M. and G. I. publicly complained (through their lawyer) of having been subjected to severe ill-treatment/torture by officers of Narimanov District Police Department in Baku following their apprehension on 10 May 2016 (see https://www.meydan.tv/ru/site/opinion/14506/). The ill-treatment/torture alleged (which was said to have occurred over a period of several days, first at Police Station No. 12 in Narimanov District of Baku, then at the Main City Police Department and finally at the Temporary Detention Centre of Narimanov District) was reportedly inflicted by several plainclothes officers, partly in the presence of senior police officials from the three establishments. It allegedly included truncheon blows on the soles of the feet ('falaka'), kicks, punches, verbal abuse, threats of rape and other forms of psychological pressure. Reportedly, the aim of the ill-treatment/torture was to force both men to publicly apologize for having sprayed graffiti on the monument of late President Heydar Aliyev and to bring flowers to the monument in front of TV cameras (which they had both refused)."

[End of the footnote] ...

Some allegations referred to excessive use of force at the time of apprehension, after the person concerned had been brought under control. However, most of the ill-treatment alleged was said to have occurred at law enforcement establishments during initial interviews by operational officers (in some cases also investigators and senior law enforcement officials) and with the aim to force the persons to sign a confession. Among the persons interviewed who made no allegations of ill-treatment, a number of them said they had immediately confessed to the crime of which they were suspected or provided other information being sought by the law enforcement officials.

The types of alleged ill-treatment included slaps, punches, kicks and truncheon blows, but there were also many allegations of far more severe forms of ill-treatment (amounting to torture) such as truncheon blows on the soles of the feet (the so-called 'falaka') – sometimes while the person concerned was suspended – and also some allegations of electric shocks and suffocation.

In many cases, the physical ill-treatment/torture was said to be inflicted while the person concerned was handcuffed and/or attached to an object or a piece of furniture. Further, in a few cases detained persons alleged having been hooded while being subjected to ill-treatment/torture.

The delegation also heard many allegations of threats (including of rectal insertion with a bottle or a truncheon) and verbal abuse, as well as threats of reprisals against the persons' relatives.

20. The above-mentioned allegations, gathered from persons interviewed individually who had had no possibility of contacting each other, were detailed, plausible and consistent. Moreover, some of them were supported by medical evidence, in the form of both lesions directly observed by the delegation's forensic medical experts and entries in medical documentation examined in temporary detention centres and pre-trial detention facilities visited. To sum up, the allegations had a high degree of credibility.

It should also be noted that a number of the persons interviewed by the delegation was clearly reluctant to speak about their experiences whilst in the custody of the police or other law enforcement agencies, and only did so after much hesitation.

...

22. Based on its delegation's findings from the 2016 periodic visit, the CPT can only conclude that persons in police custody in Azerbaijan continue to run a very high risk of being ill-treated, at the time of their apprehension but mostly when being questioned by law enforcement officers. It is clear that the risk of ill-treatment is particularly high vis-à-vis persons who do not immediately confess to an offence of which they are suspected or provide other information sought by the police or officers from other law enforcement agencies, and that the ill-treatment inflicted on such persons could be of such severity as to amount to torture. There is also a clear link between the phenomenon of torture/ill-treatment and the corruption in law enforcement agencies (e.g. demanding payments in exchange for dropping or reducing charges, or even releasing persons from unrecorded custody); furthermore, the perception of impunity amongst law enforcement officials remains systemic and endemic.

...

24. The reports on the CPT's previous visits to Azerbaijan highlighted that the phenomenon of torture and other forms of ill-treatment by police officers and members of other agencies was partly rooted in the long-standing over-reliance on confessional evidence.

From the facts found during the 2016 visit it is clear that confessional evidence remains by far the tool of predilection for solving criminal cases and securing convictions. Moreover, the delegation heard a number of consistent accounts of fabrication of physical evidence (e.g. drugs or other incriminating evidence being introduced into the detained persons' personal belongings before calling in witnesses for official searches and seizure).

The manner in which initial 'voluntary' confessions were obtained remained grossly unchallenged by the various actors of the Azerbaijani criminal justice system (including prosecutors and judges), even when the persons concerned subsequently attempted to retract their confessions on the grounds that they were given under duress and/or that their basic rights were not observed in the context of interviews.

Many detained persons with whom the delegation spoke described the same pattern of how self-incriminating statements were obtained from them. They were allegedly subjected to long initial interviews (up to 24 hours without interruption) with different operational officers (sometimes in the presence of investigators and senior law enforcement officials), often involving physical and other forms of ill-treatment (including refusal to meet their physical needs for lengthy periods), exploitation of their state of health (e.g. interviewees experiencing drug withdrawal symptoms or being under a heavy influence of drugs) and/or threats of fabricating serious criminal charges against them (or their close relatives).

They were then apparently taken to an investigator, only after they were effectively 'ready' to make a (false) confession to the crime or additional crimes they were presumed to have committed in the eyes of operational officers interviewing them, i.e. to repeat to an investigator what they have been told to say and/or to sign papers presented to them, generally in the presence of an *ex officio* lawyer called in (exclusively) for this occasion. It appeared in many instances that the manner in which such 'voluntary' confessions were obtained by operational officers was tacitly or expressly approved by investigators.

Obviously, the approach described above is not only illegal but also seriously puts into question the intrinsic reliability of criminal investigations carried out by police

officers and members of other law enforcement agencies in Azerbaijan, as well as the soundness of any convictions obtained on the basis of those investigations.

...

28. As regards impunity, the CPT is struck by the data provided by the Azerbaijani authorities at the outset of the visit: out of 579 complaints against the police received by the Prosecutor General's Office in the period from 1 January 2014 to 1 April 2016, not a single one resulted in criminal prosecutions for ill-treatment/torture. Likewise, among 1,883 police officers punished disciplinarily between 1 January 2010 and 1 January 2016, none had been sanctioned for ill-treatment/torture of a person in his/her custody; this is truly astonishing.

...

30. On numerous previous occasions, the Committee has stressed the important contribution which health-care professionals working in temporary detention centres and pre-trial detention facilities can and should make to combating ill-treatment of detained persons, notably through a thorough examination of detained persons, methodical recording of injuries and the provision of information to the relevant authorities.

Unfortunately, the information gathered during the 2016 visit shows that there had been no improvement in this area. Medical examinations, if and when performed, continued to be mostly superficial (e.g. persons were merely asked whether they had a health-related problem or were just asked to remove the upper clothes without fully undressing).

In addition, the confidentiality of such examinations was still never observed in temporary detention centres and frequently violated in pre-trial detention facilities (with custodial officers – and on occasion police convoy staff – being present); mention should also be made of the practice (observed in the two pre-trial detention facilities visited) of collective examinations, i.e. several detainees being examined at the same time in the same room.

Given that detained persons were usually questioned about the origin of their injuries under such circumstances (sometimes, in temporary detention centres, in the presence of the very police officers who had allegedly ill-treated them), it was hardly surprising that several persons interviewed by the delegation stated that – despite bearing multiple injuries clearly indicative of ill-treatment – they had declared that they had sustained their injuries before apprehension (as a result of an occupational or a sport accident, in a fight, etc.) because they had been too frightened to tell the truth.

...

32. Although some efforts were undeniably being made by certain members of health-care staff (especially in pre-trial detention facilities) to document injuries, the medical documentation seen by the delegation was generally far from being satisfactory; it was most often incomplete and even contradictory.

The description of injuries observed was frequently scant and on occasion inaccurate. In a few instances, it became evident from the consultation of medical records as well as direct observations from the delegation's doctors that injuries indicative of ill-treatment were minimised or simply went unrecorded. Further, in some cases, it would appear that health-care professionals deliberately omitted to note down statements made by detained persons in relation to their injuries, or even recorded misleading information (e.g. injuries 'unrelated to detention' or sustained 'upon arrest' which contradicted not only the explanations apparently given to them

by the persons concerned but sometimes also records drawn up earlier in a temporary detention centre and referring to injuries sustained 'during detention').

As previously, health-care professionals made no attempts to assess the consistency between statements made by detained persons and medical findings. This was the case even when statements made were manifestly inconsistent with the injuries observed (e.g. an affirmation made by the detained persons that injuries were 'old' when in fact they were evidently fresh).

33. In short, the medical documentation seen in temporary detention centres and pre-trial detention facilities visited was to a great extent unreliable and insufficient for forensic purposes. ...

...

36. In the reports on its previous visits, the CPT emphasised the importance of the role to be played by forensic doctors in the investigation of cases possibly involving ill-treatment by law enforcement officials; it also stressed that no barriers should be placed between persons who allege ill-treatment and doctors who can provide forensic reports having legal force.

Regrettably, it remains the case that the carrying out of forensic examinations is impossible without authorisation from an investigating or judicial authority. The inevitable outcome is that persons alleging ill-treatment will frequently be prevented from obtaining any evidence to support their claims. ...

...

37. More generally, as regards the independence of health-care staff, **the CPT reiterates its recommendation that the Azerbaijani authorities consider the option of placing such staff working in temporary detention centres under the authority of the Ministry of Health**. ...

...

3. Safeguards against ill-treatment

38. While the legal safeguards against ill-treatment, especially notification of custody, access to a lawyer, access to a doctor and information on rights, are envisaged by the relevant legislation, the Committee's conclusion after the 2016 visit is that they remain largely a dead letter and are mostly inoperative in practice.

...

41. Criminal suspects' access to a lawyer continued to be systematically delayed. The most frequent practice seemed to be that a lawyer (almost always an *ex officio* lawyer) was called by the investigator at the end of the official interview, when the detained person was 'ready' to sign the confession/statement; in this context, the lawyer's presence amounted to a mere formality aimed at providing legitimacy for the confession. It is also noteworthy that, similar to what had been observed in the past, many detained persons stated that they had only been able to meet their lawyer for the first (and frequently last) time at the court hearing on the issue of remand in custody. This highly regrettable state of affairs, which is clearly contrary to the Azerbaijani law and international standards, becomes even more of concern when seen in the context of the allegations of torture and other forms of ill-treatment referred to in paragraph[s] 19 [other paragraphs referred herein were omitted] ...

42. As on previous visits, the delegation was inundated with complaints about the role and attitude of *ex officio* lawyers; apparently, the lawyers mostly remained silent

during the proceedings (both at the police and in court) and sometimes would not even speak to the detained persons (or tried to dissuade them from making any complaints). The delegation also received allegations that *ex officio* lawyers had demanded undue payments for any effective assistance to be provided.

As it currently stands, the Azerbaijani system of *ex officio* legal aid to persons deprived of their liberty clearly fails to operate as an effective safeguard against ill-treatment by law enforcement officials. ...

43. Many detained persons alleged that, while in the custody of the police, they had not been able to meet their lawyer in private; furthermore, in a few cases such meetings had reportedly taken place in the presence of the very officers who had ill-treated the detained persons concerned. The delegation also noted that rooms set aside for meetings with lawyers in some of the police establishments visited did not guarantee confidentiality of such meetings."

2. Report on the seventh ad hoc visit to Azerbaijan carried out by the CPT from 23 to 30 October 2017 (footnotes omitted):

"...

2. Torture and other forms of ill-treatment

19. The delegation received numerous and very widespread allegations of severe physical ill-treatment of persons detained by the police (or who had recently been in police custody) as criminal suspects, including juveniles as young as 15. The police ill-treatment appeared to follow a very consistent pattern throughout the different regions visited: it was said to have occurred mostly in police establishments during initial interviews by operational police officers (in some cases also investigators and senior officers in charge of police establishments) and with the aim to force the persons to sign a confession, provide other information or accept additional charges. The few criminal suspects and remand prisoners who told the delegation that they had not been ill-treated had reportedly immediately co-operated with or confessed to the police.

20. The types of alleged ill-treatment included slaps, punches, kicks, truncheon blows, blows inflicted with a wooden stick, a chair leg, a baseball bat, a plastic bottle filled with water or with a thick book, but there were also many allegations of more severe forms of ill-treatment, including torture, such as truncheon blows on the soles of the feet (often while the person was suspended) and infliction of electric shocks (including with the use of electric discharge weapons).

In many cases, the physical ill-treatment/torture was said to be inflicted while the person concerned was handcuffed and/or attached to an object or a piece of furniture.

21. One method of torture repeatedly referred to by persons with whom the delegation spoke and who had been apprehended by the police in different parts of the country consisted of a detained person's hands and legs being tied together (usually with packing tape but sometimes with a rope, with leather belts or handcuffs), forcing the person to bend tightly, passing a metal pipe or a thick wooden stick between the person's elbows and knees so as to immobilise the person in such a bent position, suspending the person using the pipe or stick, and then administering blows over the whole body (including the soles of the feet) while suspended. Some persons interviewed by the delegation referred to this method of torture as the 'turbine'.

22. In addition to the aforementioned, the delegation received numerous allegations of excessive use of force at the time of apprehension, after the person concerned had

been brought under control, as well as physical ill-treatment inflicted while the persons concerned were being transported to a law enforcement facility in a service vehicle.

...

24. The allegations of torture and other forms of ill-treatment received by the delegation, made independently by persons who did not have the possibility to consult each other, were detailed and consistent. Moreover, some of them were supported by medical evidence, in the form of both lesions directly observed by the delegation's forensic medical experts and entries in medical documentation examined in TDCs [temporary detention centres] and (especially) pre-trial detention facilities visited. Some of the latter descriptions were fairly detailed. To sum up, the allegations had a high degree of credibility.

...

26. The delegation also received many allegations of threats and verbal abuse, as well as threats of reprisals against the persons' relatives. Further, as had been the case in the past, it was clear that the ill-treatment/torture was in numerous cases related to corruption e.g. demanding payments in exchange for dropping or reducing charges.

27. The CPT's overall impression is that torture and other forms of physical ill-treatment by the police and other law enforcement agencies, corruption in the whole law enforcement system (e.g. demanding payments in exchange for dropping or reducing charges, or even releasing persons from unrecorded custody) and impunity remain systemic and endemic. Moreover, the findings of the 2017 ad hoc visit suggest the existence of a generalised culture of violence among the staff of various law enforcement agencies.

The Committee wishes to add that its delegation has encountered, among the persons deprived of their liberty it has interviewed, a prevalent belief that there is no point in complaining about the ill-treatment/torture suffered, as well as a fear to do so. Furthermore, once again many interviewed persons alleged that they had complained about ill-treatment to prosecutors and/or judges but their complaints were ignored despite visible injuries. This is why the real extent of the phenomenon of torture and other forms of ill-treatment by law enforcement agencies is likely to be much larger than that based on the allegations actually heard by the delegation.

The CPT finds it disturbing to the highest degree that, almost 16 years after the Committee's first visit to Azerbaijan, such findings continue to be made.

...

28. As the Committee has stressed many times in the past, the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. During its visits to all Member States of the Council of Europe, the CPT routinely assesses the activities of the authorities empowered to conduct official investigations and bring criminal and/or disciplinary charges in cases involving allegations of ill-treatment/torture.

Taking into account the findings of this visit, the CPT deeply regrets to conclude that, at present, such activities are absolutely ineffective. Official statistics communicated by the Azerbaijani authorities at the outset of the visit suggest that there have been no recent convictions of law enforcement officials for torture and other forms of ill-treatment, which renders the situation in the country exceptional in

the entire Council of Europe and very worrying when compared with the number of credible allegations received by the Committee, this time and in the past.

...

29. On numerous previous occasions, the Committee has stressed the important contribution which health-care professionals working in temporary detention centres and pre-trial detention facilities can and should make to combating ill-treatment of detained persons, notably through a thorough examination of detained persons, methodical recording of injuries and the provision of information to the relevant authorities.

Unfortunately, the information gathered during the 2017 ad hoc visit shows that there had been no improvement in this area. Medical examinations, if and when performed, continued to be mostly superficial and the confidentiality of such examinations was still never observed in temporary detention centres and frequently violated in pre-trial detention facilities (with custodial officers – and on occasion police convoy staff – being present).

Furthermore, the delegation again observed that the medical documentation was generally far from being satisfactory; it was most often incomplete and even contradictory, with the description of injuries being frequently scant and on occasion inaccurate. Moreover, several persons interviewed by the delegation stated that doctors/feldshers (whether employed in the TDCs, pre-trial detention facilities or elsewhere e.g. the SSS Polyclinic or the Military Hospital) ignored or dismissed their explanations as to the origin of their injuries, or even refused to record the injuries and/or explanations.

...

As previously, health-care professionals made no attempts to assess the consistency between statements made by detained persons and medical findings. This was the case even when statements made were manifestly inconsistent with the injuries observed (e.g. an affirmation made by the detained persons that injuries were 'old' when in fact they were evidently fresh). In short, the medical documentation seen in temporary detention centres and pre-trial detention facilities visited was to a great extent unreliable and insufficient for forensic purposes.

...

3. Safeguards against ill-treatment

31. As regards the legal safeguards against ill-treatment, especially notification of custody, access to a lawyer, access to a doctor and information on rights, the CPT's conclusion after the 2017 ad hoc visit is exactly the same as after the 2016 periodic visit, namely those safeguards remain largely a dead letter and are mostly inoperative in practice.

...

33. Access to a lawyer (almost always an *ex officio* lawyer) was again systematically delayed until after the person had confessed; in this context, the lawyer's presence amounted to a mere formality aimed at providing legitimacy for the confession (by having the lawyer sign under the detained person's statement). It is also noteworthy that, similar to what had been observed in the past, many detained persons stated that they had only been able to meet their lawyer for the first (and frequently last) time at the court hearing on the issue of remand in custody. This highly regrettable state of affairs, which is clearly contrary to the Azerbaijani law and international standards,

becomes even more of concern when seen in the context of the allegations of torture and other forms of ill-treatment referred to in paragraphs 19 to 26 above. ...

34. As on previous visits, the delegation was inundated with complaints about the role and attitude of *ex officio* lawyers; apparently, the lawyers mostly remained silent during the proceedings (both on the premises of law enforcement agencies and in court) and sometimes would not even speak to the detained persons (or tried to dissuade them from making any complaints). The delegation also received allegations that *ex officio* lawyers had demanded undue payments for any effective assistance to be provided.

Clearly, the Azerbaijani system of *ex officio* legal aid to persons deprived of their liberty continues to fail to operate as a safeguard against ill-treatment by law enforcement officials. ...

35. Many detained persons alleged that, while in the custody of a law enforcement agency, they had not been able to meet their lawyer in private; furthermore, in a few cases such meetings had reportedly taken place in the presence of the very officers who had ill-treated the detained persons concerned. ..."

THE LAW

I. JOINDER OF THE APPLICATIONS

84. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

85. The applicants complained under Article 3 of the Convention that they had been ill-treated during their arrest and whilst in police custody. They also complained that the domestic authorities had failed to investigate their allegations of ill-treatment. Article 3 of the Convention provides as follows:

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

A. Admissibility

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

B. Merits

1. The applicants' alleged ill-treatment

(a) The parties' submissions

87. The applicants maintained that they had been subjected to ill-treatment and torture by the police, in order, first, to punish them for painting graffiti on the statue and, secondly, to extract confessions from them with regard to fabricated criminal charges. In this context, the applicants submitted that they had not been given an opportunity to retain a lawyer of their own choosing at the time of their arrest and initial detention in the temporary detention centre, but rather had been formally provided with State-funded lawyers. They argued that their allegations of ill-treatment by the police were supported by the findings of the UN Working Group as well as by the statements of their lawyer, Mr Sadigov, who had witnessed their ill-treatment in the exercise yard of the temporary detention centre and had observed injuries on their bodies.

88. Relying on the findings of the investigating authorities and the decisions of the domestic courts, the Government submitted that there was no evidence to prove that the applicants had been subjected to ill-treatment by the police. Following their arrest the applicants had been informed of their rights and provided with State-funded lawyers. The medical examinations carried out on 11 May 2016 and the forensic examinations of 26 May 2016 had not revealed any injuries on their bodies.

(b) The Court's assessment

89. The Court refers to the general principles reiterated by the Court, *inter alia*, in the case of *Bouyid v. Belgium* ([GC], no. 23380/09, §§ 81-88, ECHR 2015). Notably, allegations of ill-treatment contrary to Article 3 must be supported by appropriate evidence. To assess this evidence, the Court adopts the standard of proof "beyond reasonable doubt" but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries occurring during such detention. The burden of proof is then on the Government to provide a satisfactory and convincing explanation by producing evidence establishing facts which cast doubt on the account of events given by the victim. In the absence of such explanation, the Court can draw inferences which may be unfavourable for the Government. That is justified by the fact that persons in custody are in a vulnerable position and the authorities are under a duty to protect them.

90. Turning to the present cases, the Court notes that the Government dispute the applicants' allegations on all counts. The thrust of the Government's submissions concerns the lack of any injuries on the applicants according to their medical records and forensic examinations.

91. The Court notes first that the applicants' description of the circumstances regarding their alleged ill-treatment during the period between 10 and 13 May 2016, which was put forward before the domestic authorities and the Court, was very detailed, specific and consistent throughout the whole period. These allegations were also described in the CPT report (see paragraph 19 of the report on the fourth periodic visit to Azerbaijan, cited in paragraph 83 above). At this juncture, the Court observes that the specific details provided by the applicants concerning the manner of their alleged ill-treatment appear to be in line with the general observations made by the CPT during its visits to Azerbaijan. Namely, according to the latter, "the police ill-treatment appeared to follow a very consistent pattern, [which] was said to have occurred mostly in police establishments during initial interviews by operational police officers ... and with the aim to force the persons to sign a confession, provide other information or accept additional charges". Moreover, the applicants' allegations also correspond to the types of ill-treatment alleged by a number of persons interviewed by the CPT delegation in Azerbaijan, including the use of "falaka" with hands and legs being tied with tape, and threats of rectal insertion with a truncheon (see paragraph 83 above).

92. As regards the credibility of the applicants' allegations, the Court notes that their account of ill-treatment was supported by the findings of the UN Working Group on Arbitrary Detention, which visited them in the pre-trial detention facility after the alleged events in the period between 16 and 25 May 2016 and observed "possible physical sequels of such ill-treatment, in the form of visible marks on parts of their bodies" (see paragraph 36 above). Furthermore, their allegations were corroborated by the consistent statements made by their lawyer before the domestic authorities and the Court, who alleged having witnessed their ill-treatment in the exercise yard of the temporary detention centre on 12 May 2016 and who also observed injuries on the applicants' bodies during his visit to the pre-trial detention facility (see paragraphs 19, 21, 27, 29, 67 and 75 above).

93. In view of the above, the Court finds that there is *prima facie* evidence in favour of the applicants' version of events and that the burden of proof shifts to the Government to provide a satisfactory and convincing explanation.

94. In this connection, the Court first notes that the Government did not provide any comments or explanation with respect to the above-mentioned evidence relied on by the applicants. As regards more specifically the findings of the UN Working Group on Arbitrary Detention, the Court also cannot overlook the fact that in the proceedings before the UN Human

Rights Council, the Government's response was limited to the period after 13 May 2016, that is after the alleged events (see paragraph 37 above). Furthermore, the Court finds it significant that the evidence invoked by the applicants was completely ignored by the investigating authorities in the domestic proceedings.

95. As to the Government's conclusion that the applicant's allegations were unfounded because no injuries had been noted in their medical records of 11 May 2016 and forensic reports of 30 May 2016, the Court observes that according to the medical records drawn up at the temporary detention centre on 11 May 2016, even though there were no injuries on the second applicant, the first applicant had "superficial redness on the left side of the neck". However, the records did not contain any explanation as to the origin of that redness or how it had been sustained (compare *Musa Yılmaz v. Turkey*, no. 27566/06, § 49, 30 November 2010). Moreover, the Court notes the apparent discrepancies in the medical records in question as regards the timing of the applicants' admission to the temporary detention centre. Namely, according to those records, the applicants were admitted on the morning of 11 May 2016, whereas it follows from a letter from the head of the NDPO to the investigating authorities that the applicants were admitted in the middle of the night of 10 to 11 May 2016 (see paragraph 70 above for both accounts). In this context the Court deems it appropriate to refer to the observations made by the CPT during its visits to Azerbaijan concerning the "superficial" nature of medical examinations carried out in the temporary detention centres and the alleged refusals of medical personnel to register injuries (see paragraph 83 above). As regards the applicants' forensic examinations, the Court notes that they were carried out with a delay of two weeks after the alleged events (see paragraph 103 below). The Court further notes that the forensic reports in question lack any detail and fall short of the standards accepted by the Court (see *Ballıktaş v. Turkey*, no. 7070/03, § 28, 20 October 2009). In particular, while both reports were worded in identical manner they did not specify the nature of the examinations and analysis carried out in order to corroborate or refute the applicants' allegations of ill-treatment and torture. The Court also observes that the forensic expert in his reports relied on the applicants' medical records of 11 May 2016 which were prepared in the temporary detention centre (see paragraph 72 above). However, in view of the above, the medical documentation produced in the temporary detention centre cannot be considered reliable and sufficient for forensic purposes. Thus, the Court finds that in the light of the existence of other credible evidence, for which the Government did not provide any explanation whatsoever, the medical documents referred to by the Government cannot serve as grounds for dismissing the applicants' allegations.

96. Lastly, as regards the applicants' access to their lawyer, which is one of the fundamental safeguards against ill-treatment, the Court notes that the

Government submitted that following their arrest on 10 May 2016, the applicants had been provided with State-appointed lawyers on the same day. They did not dispute the fact that the applicants were able to meet the lawyer of their own choosing only on 12 May 2016, during the hearings concerning their remand in custody. However, the Government did not explain why the applicants had been provided with State-appointed lawyers during the initial stage. On that point, the Court would again take note of the observations made by the CPT pointing to systematic delays of criminal suspects' access to lawyers until their confession had been obtained in the presence of *ex officio* lawyers (see paragraph 83 above). Against this background, in the absence of any explanation by the Government regarding delayed access to the lawyer of their own choosing, the Court finds that the fact that during the period in question the applicants gave self-incriminating "explanations" (*izahat*) to police officers adds credibility to their allegations of ill-treatment.

97. Thus, in the light of the material in its possession and having regard to the above considerations, the Court finds it established beyond reasonable doubt that the applicants were subjected to ill-treatment by police officers, which was inflicted, in particular, with a view to force them to confess to serious charges which they alleged were fabricated. As regards the applicants' allegation that their ill-treatment was also aimed at punishing them for painting graffiti on the statue of the former president of Azerbaijan, the Court notes that this allegation is at the heart of the applicants' complaint under Article 18 of the Convention and the Court will examine it below accordingly (see paragraphs 149-159 below).

98. The Court reiterates that it has deemed "inhuman" any treatment that was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. Treatment has been held to be "degrading" when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance, or when it was such as to drive the victim to act against his will or conscience (see *Gäfgen v. Germany* [GC], no. 22978/05, §§ 89-90, ECHR 2010, and the cases cited therein). In view of the evidence at the Court's disposal, the Court finds that the applicants were subjected to inhuman and degrading treatment by the police.

99. Accordingly, there has been a violation of Article 3 of the Convention under its substantive limb.

2. Alleged failure to carry out an effective investigation

(a) The parties' submissions

100. The applicants maintained their complaints.

101. The Government submitted that the domestic authorities had conducted an effective investigation into the applicants' allegations of ill-treatment.

(b) The Court's assessment

102. The Court refers to the principles established in its case-law as to the procedural limb of Article 3 set out, *inter alia*, in *Mocanu and Others v. Romania* ([GC], nos. 10865/09 and 2 others, §§ 316-326, ECHR 2014 (extracts)), which are equally pertinent to the present cases.

103. While the obligation to investigate effectively is one of means and not of results, the Court notes that as in many previous similar cases examined by the Court against Azerbaijan, the criminal investigations in the present cases have been plagued by a combination of the same or similar defects. Notably, the applicants' forensic examinations were carried out with a delay of two weeks after the alleged events, even though their allegations of ill-treatment had been brought to the domestic authorities' attention in a prompt manner. As the Court has held on several occasions, a failure to secure 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; *Rizvanov v. Azerbaijan*, no. 31805/06, § 59, 17 April 2012; and *Muradova v. Azerbaijan*, no. 22684/05, § 117, 2 April 2009).

104. The investigation also failed to secure the video recordings from the surveillance cameras of the NDPO and its detention facility, due to the fact that the storage period was allegedly limited to seven days (see paragraph 68 above). However, given that the applicants lodged their complaints with the authorities on 12 May 2016, that is immediately after the events in question, there is nothing which would justify the delay in examining those recordings, even within the period of seven days. Furthermore, the Court also notes the discrepancies as regards the storage of video recordings in the detention facility concerned. Namely, in the case of *Mustafa Hajili v. Azerbaijan*, where, as established by the Court, the applicant was subjected to ill-treatment in the exercise yard of the same detention facility, the authorities alleged that the video recordings were automatically deleted one month later (no. 42119/12, § 23, 24 November 2016), whereas in the present cases that period was allegedly limited to seven days. It remains unclear from the NDPO's reply on which regulatory frameworks those storage periods are based, as they appear to vary from one case to another. Besides, the investigator in charge of the cases at hand failed to take immediate actions, such as to promptly examine the premises of the police station concerned and to collect the relevant evidence, but rather relied on formal written replies provided by the NDPO, namely the same police station whose officers and administration the applicants

accused of ill-treatment. Nor did the investigating authorities consider the evidence put forward by the applicants as regards their alleged ill-treatment by the police (see paragraph 94 above).

105. The foregoing considerations are sufficient to enable the Court to conclude that the authorities failed to carry out effective investigations into the applicants' credible allegations of ill-treatment. The inefficiency of activities related to official investigations into allegations of ill-treatment in Azerbaijan has been noted by the CPT on a number of occasions, indicating that it "render[ed] the situation in the country exceptional in the entire Council of Europe" (see the CPT's findings, paragraph 83 above).

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

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

107. Relying on Article 5 § 1 of the Convention, the applicants complained that their arrest and detention had not been based on a reasonable suspicion that they had committed a criminal offence, because the drugs found on them and in their flats had been planted by the police in order to punish them for spraying graffiti on a statue of the former president of Azerbaijan. Article 5 § 1 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:
>
> ...
>
> (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; ..."

A. Admissibility

108. The Court notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

109. The applicants maintained their complaints and claimed that it was manifestly evident from the circumstances of their cases that they had been detained on the basis of evidence planted during the searches and subjected

to ill-treatment and torture in order to punish them for painting graffiti on the statue of the former president of Azerbaijan. They argued that the Government had failed to explain how it was possible that immediately after they had painted graffiti on the statue, the police had allegedly received operational information about their involvement in drug trafficking. Moreover, the Government had provided no explanations as regards the fact that the applicants had been arrested and tortured following the same pattern, they had been charged with the same crimes and sentenced to the same prison terms.

110. The applicants further argued that the personal searches and the searches of their flats had been carried out without the presence of attesting witnesses or a defence lawyer and had not been video-recorded, which could have prevented the abuse by the police.

111. They also submitted that despite their repeated complaints, the domestic courts had failed to investigate their allegations concerning the planting of drugs by the police and the ulterior motive for their arrest and detention.

(b) The Government

112. The Government submitted that the applicants had been arrested and detained on reasonable suspicion of having committed an offence. In particular, they had been arrested on the basis of operational information received by the police about their involvement in drug-trafficking, and searched in the presence of attesting witnesses, who had testified against them. The prosecuting authorities had presented before the domestic courts detailed operational information concerning the circumstances under which the applicants had acquired the drugs and planned to use them. The personal searches of the applicants and the searches of their apartments had been carried out in the presence of attesting witnesses. As regards the applicants' complaints that those searches had been carried out in the absence of their lawyer, the Government argued that there was no such obligation under domestic law or the Court's case-law. According to the Government, the persistence of a reasonable suspicion against the applicants had been supported by material collected during the criminal investigation, which included reports and records concerning the investigative measures carried out and statements given by the applicants and attesting witnesses.

2. The Court's assessment

(a) The Court's general approach

113. As regards the applicants' complaints that their arrest and detention was not based on a reasonable suspicion that they had committed a crime, the Court will examine them on the basis of the relevant general principles set out, among others, in the case of *Ilgar Mammadov* (no. 15172/13,

§§ 87-90, 22 May 2014). The requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. As a general rule, problems concerning the existence of a "reasonable suspicion" arise at the level of the facts. The very specific context of the present case calls for a high level of scrutiny of the facts. The Court's task is to verify whether there existed sufficient objective elements that could lead an objective observer to reasonably believe that the applicant might have committed the acts alleged by the prosecuting authorities (ibid., § 94). Besides, the Court has to have regard to all the relevant circumstances in order to be satisfied that objective information existed showing that the suspicion against the applicants was "reasonable". In this connection, at the outset, the Court considers it necessary to have regard to the general context of the facts of this particular case (see *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 120, 17 March 2016)

(b) Contextual factors and sequence of events

114. The Court notes that it is not disputed between the parties that both applicants were members of NIDA, a youth organisation which actively participated in organising and conducting anti-government demonstrations. The Court observes in this regard that in its previous judgment concerning arrest and detention of other members of that organisation, it found that the authorities targeted NIDA and its members and portrayed them as belonging to "radical destructive forces" (see paragraph 7 above).

115. As regards the sequence of events, the Government did not dispute the fact that during the night of 9 to 10 May 2016, that is several hours prior to the applicants' arrest, they had painted graffiti with political slogans on the statue of the former president of Azerbaijan, Mr Heydar Aliyev and disseminated photographs thereof on social networks. The Government argued, however, that their painting of graffiti had had nothing to do with their arrest and detention, which had been based on a reasonable suspicion that they had committed drug-related crimes. The Court will accordingly proceed to examine the facts related to the criminal investigations against the applicants on account of their alleged involvement in drug trafficking on the basis of the documents submitted by the Government, which they claimed comprised "copies of all relevant records pertaining to any procedural steps taken" in the cases.

(c) Criminal investigations into the applicants' alleged drug trafficking

116. At the outset, the Court notes as a general observation pertinent to both cases, that as it was argued by the applicants, although the criminal proceedings against them were not formally interrelated in any way and were based on separate sets of facts, it is apparent from the documents in the case files that those proceedings followed the same pattern. First, in both

cases the criminal charges and the description of the way in which the applicants had allegedly acquired and stored the drugs were the same: both applicants, while acting in organised criminal groups, had allegedly acquired large quantities of heroin from Iranian nationals, a small part of which they carried on themselves while the remaining parts they kept in their respective flats. Secondly, the investigative measures taken in both cases were identical in substance as well as in scope, to the extent that even the wording of the records and reports prepared within the investigations seem to have been copied and pasted. Thirdly, the Court cannot disregard the timing of the relevant inquiries and the measures taken against the applicants: the receipt of the operational information about the applicants' involvement in drug trafficking and their arrest took place on the same day and they were admitted to the temporary detention facility and brought before the domestic court to decide on their detention at around the same time.

117. Bearing that in mind, and having regard to the seriousness of the allegations made by the applicants and the level of persuasion required in this context, the Court will closely scrutinise the investigative measures carried out and the evidence collected by the authorities. In this context, the Court observes that, as it transpires from the material in the case files, the criminal investigations against the applicants comprised two main phases: the first one consisted of the receipt of the operational information which led to the applicants' arrest, and the second one related to the investigative measures carried out following their arrest. The Court will examine each phase in turn.

(i) Operational information leading to the applicants' arrest

118. It transpires that on 10 May 2016 officers from the Department on Combating Drug Trafficking of the BMPD reported, in a separate and unrelated manner, that they had received operational information according to which unidentified persons named "Giyas" and "Bayram" were involved in drug trafficking in Baku, carried drugs on themselves and stored them at their homes. The operational information referred to by the police did not contain any details capable of identifying those persons. In order to verify that information and identify the suspects, the police therefore decided on the same day to conduct operational search measures, as "it [was] not possible to identify the persons named 'Giyas' and 'Bayram' by other means" (see paragraphs 40 and 46 above). In this connection, the Court makes the following observations.

119. Firstly, the Court notes that it is not disputed between the parties that the applicants had no criminal history of being involved in drug trafficking or any other crimes whatsoever prior to the events at stake.

120. Secondly, the Court notes that neither the police reports nor any decisions taken subsequently contained any specifics as regards the

collection and receipt of the operational information in question. Notably, it remains unknown how that information was allegedly received by the police, the source of the information and how that source became aware of the information

121. Thirdly and most importantly, as regards the Government's argument that the applicants had been arrested on the basis of operational information that they had been involved in drug trafficking, the Court points out that the operational information had not specifically singled out the applicants in a manner capable of identifying them, for example, by indicating their full name or other personal details. The operational information had merely referred to persons named "Giyas" and "Bayram" living in Baku (compare *Kobiashvili v. Georgia*, no. 36416/06, § 61, 14 March 2019). In this connection the Court notes that there is a complete evidentiary void between the time when the authorities received information about certain individuals named "Giyas" and "Bayram" being involved in drug trafficking and the time when the authorities approached the applicants with a view to arresting them. In particular, the Court observes that when ordering the operational measures, the officers in charge of the cases relied on "the materials [which were] collected" on the basis of the operational information received. However, those materials do not appear in the case files. Nor is there anything in the domestic decisions or the Government's submissions before this Court which would suggest that those materials were classified by the relevant authorities. Furthermore, in their decisions on operational measures, the officers ordered that inquiries be conducted and that possible witnesses be questioned in order to identify the suspects named "Giyas" and "Bayram". Again, it does not follow from the documents in the files that any measures of that kind were ever taken. Thus, the fact that the authorities were able to identify the applicants as being those persons within a matter of hours without any specific measures having been taken raises serious questions as to the credibility of the operational information received and the measures carried out in this context.

(ii) Investigative measures taken following the applicants' arrest

122. The Court notes that the investigative measures carried out into the applicants' alleged involvement in drug trafficking consisted mainly of personal searches, searches of their flats and the seizure of narcotic substances allegedly discovered as a result of those searches.

123. As far as the applicants' personal searches are concerned, the Court notes that neither applicant was searched at the place of arrest. It follows from the documents submitted by the Government that both applicants were taken to the NDPO where the relevant searches were carried out. In this connection, the Court has already found in two cases against Azerbaijan, albeit under Article 6 of the Convention, that the police's failure to conduct a search immediately following an arrest without good reason raises

legitimate concerns about the possible "planting" of evidence (see *Sakit Zahidov v. Azerbaijan*, no. 51164/07, § 53, 12 November 2015, and *Layijov v. Azerbaijan*, no. 22062/07, § 69, 10 April 2014). The Court notes that the above considerations are also pertinent in the present cases, as the applicants were searched only once they had been taken into police custody and were under the complete control of the police. There is nothing to suggest that there were any special circumstances rendering it impossible to carry out a personal search on the spot immediately after the applicants had been stopped by the police. This is all the more true given that the applicants were stopped by the police in connection with alleged operational information that individuals named "Giyas" and "Bayram" were carrying illicit drugs on themselves with the intention of selling them.

124. As regards the conditions under which the applicants were searched, the Court has found above that the applicants were subjected to inhuman and degrading treatment in police custody and gave confessions under such treatment; this coincides with the time when they were searched by the police and narcotic substances forming the evidence against them were found (compare *Layijov,* cited above, § 71).

125. As regards the searches of the applicants' flats, the Court observes that during those searches the only evidence which was allegedly found and seized were the parcels containing heroin. In this connection, the Court points out that the applicants were not merely accused of possession of drugs, but rather of involvement in drug trafficking. However, as it transpires from the relevant records, the police did not attempt to search for other potential evidence – such as cash, information concerning possible suppliers or buyers, or items relating to drug paraphernalia, including scales and packaging material – limiting the relevant searches to exclusively seizure of the drugs.

126. The Court further notes that in their decisions to carry out the investigative measures the officers in charge of the cases ordered their colleagues to use, among other things, video devices during the conduct of those measures. However, it appears for reasons unknown to the Court that the personal searches of the applicants and the searches of their flats were not video-recorded. In this context, the Court agrees with the applicants that the use of video recording, be it during arrest, search or interrogation, constitutes an important safeguard against police misconduct, and the Court attaches particular importance to this type of evidence (see, for example, *Sakit Zahidov,* § 53, *and Layijov*, § 69, both cited above; *Ciorap v. Republic of Moldova* (no. 5), no. 7232/07, §§ 66-67, 15 March 2016; and *Hentschel and Stark v. Germany*, no. 47274/15, §§ 95-99, 9 November 2017).

127. As to the Government's argument that the relevant searches were carried out in the presence of attesting witnesses, which was disputed by the applicants, the Court takes notes of the observations made by the CPT delegation about a number of consistent accounts when drugs or other

incriminating evidence were introduced into the detained persons' personal belongings before calling in witnesses for official searches and seizure (see paragraph 83 above). In the particular circumstances of the present cases and in the absence of any other evidence, such as video recordings of those searches, the Court finds that it cannot attach decisive weight to this argument raised by the Government even assuming that those searches took place in the presence of attesting witnesses.

128. Moreover, the Court notes that there is an obvious inconsistency in the records of the searches of the applicants' flats. Namely, the Government did not dispute the fact that the searches of the applicants' flats had taken place without the presence of defence lawyers. However, according to the relevant records, the applicants' State-appointed lawyers allegedly attended those searches, which is inferred from the indication in the records that "the members of the operational team, the defence lawyer[s] and attesting witnesses went to the apartment[s] where the applicant[s] lived" (see paragraphs 42 and 48 above).

129. In the light of the above considerations, the Court finds that the manner in which the personal searches of the applicants and the searches of their flats were carried out cast doubt on the reliability and accuracy of the evidence obtained as a result (compare *Kobiashvili*, cited above, § 65).

130. As regards the scope of the criminal investigations at stake, the Court reiterates that the investigative measures carried out were mainly limited to conducting the relevant searches, without any further investigative steps being taken. The circumstances relating to the applicants' alleged acquisition and selling of drugs, the alleged existence of organised criminal groups and the applicants' alleged role therein were completely left aside by the investigating authorities. Besides, the applicants, who were members of an opposition-oriented movement, constantly complained before the domestic courts and the prosecuting authorities that the drugs in question had been planted by the police in order to punish them for the political slogans they had painted the day prior to their arrest. However, despite the seriousness of the allegations made, at no stage during the proceedings did the domestic authorities endeavour to verify and investigate those complaints.

(d) Conclusion

131. Having regard to the above-mentioned elements and the inferences which may be drawn therefrom, in particular, as regards the applicants' status, the sequence of the events, the manner in which the investigations were carried out and the authorities' conduct, the Court finds it that the material put before it does not meet the minimum standard set by Article 5 § 1 (c) of the Convention for the reasonableness of a suspicion required for an individual's arrest..

132. In view of the above, the Court concludes that the applicants were deprived of their liberty in the absence of a "reasonable suspicion" of them having committed a criminal offence.

133. There has therefore been a violation of Article 5 § 1 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 5 §§ 3 AND 4 OF THE CONVENTION

134. The applicants complained under Articles 5 and 6 of the Convention that the domestic courts had failed to provide "relevant and sufficient" reasons justifying their pre-trial detention and that the judicial review of their detention had not been effective. The second applicant also complained that the courts had failed to examine on the merits his request for release of 20 September 2016. Having the power to decide on the characterisation to be given in law to the facts of a complaint (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018), the Court considers that the applicants' complaints fall to be examined under Article 5 §§ 3 and 4 of the Convention which read 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.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

A. Admissibility

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

B. Merits

136. The parties' submissions are similar to those made, in particular, in the case of *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 223, 20 September 2018.

137. As regards the applicants' complaints under Article 5 § 3 of the Convention, the Court does not consider it necessary to examine them separately, having regard to its findings under Article 5 § 1 of the Convention (see *Aliyev*, cited above, § 166).

138. As to the applicants' complaints under Article 5 § 4, the Court found in the *Aliyev* judgment that there was a systemic failure on the part of the domestic courts to protect against arbitrary arrest and continued pre-trial detention (cited above, §§ 172 and 224). Having regard to the circumstances of the present cases and the material in its possession, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present cases.

139. In view of the above, the Court finds it unnecessary to examine the second applicant's additional complaint concerning the domestic courts' refusal to examine on the merits his request for release of 20 September 2016.

140. There has therefore been a violation of Article 5 § 4 of the Convention.

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

141. Relying on Article 18 of the Convention, the applicants complained that their right to liberty had been restricted for purposes other than those prescribed by the Convention. Article 18 provides:

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

A. Admissibility

142. The Government submitted that the applicants had failed to exhaust domestic remedies because in the proceedings before the domestic courts they had not relied on Article 18 of the Convention or put forward similar legal arguments under domestic law.

143. The applicants disagreed with the Government and argued that in all their complaints to the domestic courts, they had stated that they had been arrested on the basis of planted evidence and subjected to ill-treatment and torture in order to punish them for painting graffiti on the statue.

144. The Court notes that the material before it does not support the Government's objection as to the exhaustion of domestic remedies. The documents in the case file indicate that in the proceedings concerning their pre-trial detention, the applicants complained that the drugs found on them and in their flats had been planted by the police in order to punish them for spraying graffiti (see, *a contrario*, *Rustamzade v. Azerbaijan*, no. 38239/16, § 58, 7 March 2019). The Court therefore rejects the Government's objection as to exhaustion of domestic remedies.

145. The Court further notes that the applicants' complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the

Convention. They are not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

146. The applicants submitted that the actual purpose of their arrest and detention based on planted evidence had been to punish them for painting graffiti with political slogans on the statue of the former president. According to the applicants, their punishment for painting graffiti had also served as a lesson to others in order to prevent the repetition of similar acts against the statue of Mr Heydar Aliyev, who was the father of the current president of the country.

147. The Government submitted that the applicants' allegations amounted to speculation, since there was no evidence that their arrest had been somehow connected to their painting of graffiti. Relying on the cases of *Khodorkovskiy v. Russia* (no. 5829/04, 31 May 2011) and *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, 25 July 2013), the Government stated that the restrictions imposed by the State in the present case under Article 5 of the Convention had not been applied for any purpose other than those envisaged by that provision, and strictly for the proper investigation of the serious criminal offences allegedly committed by the applicants. In their view, none of the accusations against the applicants had been political. The acts which had been imputed to them had not been related to their participation in political life, real or imaginary; they had in fact been prosecuted for common criminal offences.

2. The Court's assessment

148. The Court will examine the applicants' complaint in the light of the relevant general principles set out by the Grand Chamber in its judgment in *Merabishvili* ([GC], no. 72508/13, §§ 287-317, 28 November 2017 and *Navalnyy v. Russia* ([GC], nos. 29580/12 and 4 Others, §§ 164-165, 15 November 2018).

149. The Court notes at the outset that it has already found that the applicants' arrest and pre-trial detention were not carried out for a purpose prescribed under Article 5 § 1 (c) of the Convention, as the charges against them were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention (see paragraph 133 above). Therefore, no issue arises in the present cases with respect to a plurality of purposes, where a restriction is applied both for an ulterior purpose and a purpose prescribed by the Convention (compare *Rashad Hasanov and Others*, cited above, § 119).

150. However, the mere fact that the restriction of the applicants' right to liberty did not pursue a purpose prescribed by Article 5 § 1 (c) is not in itself a sufficient basis to conduct a separate examination of a complaint under Article 18 unless the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case (compare *Rashad Hasanov and Others*, cited above, § 120). Therefore, it remains to be seen whether there is sufficient proof that the authorities' actions were actually driven by an ulterior purpose.

151. In this connection, the Court points out that in the case of *Aliyev*, cited above, § 223, it found that its judgments in a series of similar cases reflected a pattern of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders through retaliatory prosecutions and misuse of the criminal law in breach of Article 18.

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

153. Firstly, as regards the applicants' status and the sequence of the events, the Court reiterates that the applicants, who were members of NIDA, the opposition oriented organisation, were arrested and detained shortly after their painting graffiti with political slogans on the statue of the former president of Azerbaijan and dissemination of photographs thereof on social networks (see paragraphs 114-115 above).

154. Secondly, the Court notes that the applicants were charged with serious drug-related offences. It follows from the conclusions above (see paragraphs 132-134) that the charges against the applicants were not based on a "reasonable suspicion" within the meaning of Article 5 § 1 (c) of the Convention. Thus, the conclusion to be drawn from this finding is that the authorities have not been able to demonstrate that they acted in good faith (see *mutatis mutandis Ilgar Mammadov*, cited above, § 141)

155. Thirdly, the Court has already established in *Rashad Hasanov and Others* case that the law-enforcement authorities clearly had targeted NIDA and its members, describing its activities as illegal, without any reason and evidence. These statements were intended to show NIDA and its members to be "destructive forces" and an organisation carrying out "illegal activities" (ibid., §§ 122 and 123).

156. Fourthly, the applicant's situation should be viewed against the backdrop of arbitrary arrest and detention of government critics, civil society activists and human-rights defenders (see *Aliyev*, cited above, § 223) and reflects the pattern mentioned in paragraph 152 above.

157. Thus, in the light of these considerations, the Court finds that the restriction of the applicants' liberty were imposed for purposes other than those prescribed by Articles 5 § 1 (c) of the Convention and the actual

purpose of the impugned measures was to punish the applicants for their painting graffiti on the statue of the former president of the country and expressing throughout political slogans against the government.

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

VI. ALLEGED VIOLATIONS OF ARTICLE 8 AND ARTICLE 18 TAKEN IN CONJUCTION WITH ARTICLE 8 OF THE CONVENTION

159. Relying on Articles 8 and 18 of the Convention, the applicants complained that their personal searches and the searches of their flats had been unlawful and had been carried out in order to frame them and to plant evidence. Article 8 of the Convention reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

160. Having regard to the Court's conclusions under Article 5 § 1 and Article 18 of the Convention taken in conjunction with Article 5, the Court finds that there is no need to examine separately the applicants' complaints under Article 8 and Article 18 taken in conjunction with Article 8.

VII. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

161. The applicants complained that the criminal prosecution against them amounted to a breach of Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

162. The applicants submitted that they had painted graffiti with political slogans on the statue of the former president in order to express their dissatisfaction with government policies and their criticism of the current political system in Azerbaijan. Their criminal prosecution on the basis of fabricated charges had been aimed at punishing them for painting graffiti, and had therefore constituted an interference with their rights under Article 10. Such interference had been neither lawful nor necessary in a democratic society.

163. The Government submitted that there was no evidence that the applicants' arrest had been somehow linked to the exercise of their rights under Article 10.

B. The Court's assessment

1. Admissibility

(a) Applicability of Article 10

164. According to the Court's well-established case-law, freedom of expression, as secured in Article 10, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those which offend, shock or disturb; such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society". Moreover, Article 10 of the Convention protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204).

165. The Court has also held that opinions, apart from being capable of being expressed through the media of artistic work, can also be expressed through conduct. For example, the Court examined the actions of the Pussy Riot punk band related to their attempts to perform their song entitled "Punk Prayer – Virgin Mary, Drive Putin Away" from the altar of Moscow's Christ the Saviour Cathedral as a response to the ongoing political process in Russia. The Court found that those actions constituted a mix of conduct and verbal expression and amounted to a form of artistic and political expression covered by Article 10 (see *Maria Alekhina and Others v. Russia* no. 38004/12, §§ 205-06, 17 July 2018). Likewise, the Court has found that pouring paint on statues of Ataturk was an expressive act performed as a protest against the political regime at the time (see *Murat Vural v. Turkey,* no. 9540/07, §§ 54-56, 21 October 2014). Detaching a ribbon from a wreath

laid by the President of Ukraine at a monument to a famous Ukrainian poet on Independence Day has also been regarded by the Court as a form of political expression (see *Shvydka v. Ukraine,* no. 17888/12, §§ 37-38, 30 October 2014). The Court also considered that the public display of several items of dirty clothing for a short time near the Hungarian Parliament, which had been meant to represent the "dirty laundry of the nation", amounted to a form of political expression (see *Tatár and Fáber v. Hungary*, no. 26005/08 and 26160/08, § 36, 12 June 2012).

166. In the present cases, the Court notes, and that it is not disputed between the parties, that the applicants sprayed graffiti on the statue of the former president of Azerbaijan with the words "F..k the system" and "Happy slave day" as a form of political protest, as the applicants claimed.

167. Having regard to the nature the applicants' acts and the ideas expressed, the Court finds that those actions constitute a mix of conduct and verbal expression and amount to a form of political expression covered by Article 10.

(b) Conclusion as to admissibility

168. In view of the above considerations, the Court concludes that Article 10 is applicable and the applicants' complaints are compatible *ratione materiae* with the provisions of the Convention.

169. The Court further notes that the applicants' complaints are not manifestly ill founded within the meaning of Article 35 § 3 (a) of the Convention. They are not inadmissible on any other grounds and must therefore be declared admissible.

2. Merits

170. The Court notes that the Government might be understood as arguing that there was no interference with the applicants' rights under Article 10. However, it has found above that the real purpose of the applicants' arrest and their pre-trial detention, which was effected within the criminal proceedings instituted on the basis of drug-related charges, was to punish them for spraying graffiti on the statue and expressing throughout political slogans against the government (see paragraph 158 above). As the Court has previously held, when it comes to allegations of political or other ulterior motives in the context of criminal prosecution, it is difficult to dissociate pre-trial detention from the criminal proceedings within which such detention had been ordered (see *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, § 185, 29 May 2019 and *Lutsenko v. Ukraine*, no. 6492/11, § 108, 3 July 2012). Furthermore, the Court cannot disregard the fact that the applicants' prosecution ultimately resulted in their final convictions and they were sentenced to lengthy prison terms, which they partially served. Thus, the Court finds that there is a

causal link between the applicants' exercise of their freedom of expression and their prosecution for drug-related crimes (see *mutatis mutandis Baka v. Hungary* [GC], no. 20261/12, §§ 148-151, 23 June 2016, where the Grand Chamber first established *prima facie* evidence of the causal link and then found that the Government failed convincingly account for the impugned measure).

171. Having regard to the foregoing, the Court considers that the applicants' criminal prosecution for drug-related crimes amounted to an interference with their right to freedom of expression.

172. In order for an interference to be justified under Article 10, it must be "prescribed by law", pursue one or more of the legitimate aims listed in the second paragraph of that provision and be "necessary in a democratic society" – that is to say, proportionate to the aim pursued (see, for example, *Steel and Others v. the United Kingdom*, 23 September 1998, § 89, *Reports of Judgments and Decisions* 1998‑VII).

173. The Court recalls at the outset that each member of Council of Europe has undertaken to accept the principle of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. In the present cases the Court observes that the applicants' criminal prosecution was not formally related to their having sprayed graffiti on the statue (compare *Murat Vural*, § 55, and *Shvydka*, § 39, both cited above). Instead of acting within the constraints of the law, the authorities chose to prosecute the applicants for drug-related crimes in retaliation for their actions. The Court considers that such interference with the applicants' freedom of expression was not only unlawful, but it was also grossly arbitrary and incompatible with the principle of the rule of law which is expressly mentioned in the Preamble to the Convention and is inherent in all the Articles of the Convention (see, *mutatis mutandis*, *Baka*, cited above, § 117).

174. There has been accordingly a violation of Article 10 of the Convention.

VIII. APPLICATION OF ARTICLE 41 OF THE CONVENTION

175. 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

176. The applicants claimed 300,000 euros (EUR) each in respect of non-pecuniary damage on account of the serious mental suffering caused by

their ill-treatment, arbitrary detention and inability to continue their university education.

177. The Government submitted that the amounts claimed by the applicants were unsubstantiated and excessive.

178. The Court considers that the violations of the Convention of which the applicants were victims have caused them substantial damage. In particular, the Court has found that the authorities subjected both applicants, young students at the relevant time, to arbitrary detention and to inhuman and degrading treatment in order to punish them for spraying graffiti on a statue of the former president. As a result of those violations, the applicants found themselves in a desperate and helpless situation, which lasted for a considerable period of time. In fact, since their arrest on 10 May 2016, both applicants were kept in pre-trial detention and then imprisoned for almost three years until they were released following a presidential pardon.

179. Consequently, regard being had to the extreme seriousness of the violations of the Convention of which the applicants were victims, and ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards each applicant the sum of EUR 30,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

180. The applicants claimed EUR 43,000 each for costs and expenses. In support of their claims, they submitted a contract concluded with Mr Sadigov and Ms Sadigova for legal services rendered in the proceedings before the domestic courts and the Court.

181. The Government considered that the claim was unsubstantiated and excessive. In particular, they submitted that the costs and expenses related to the legal services in the domestic proceedings and before the Court had not actually been incurred, because the amounts claimed had not been paid by the applicants. They also noted that a number of legal services stipulated in the contract had not been provided at all.

182. 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 were actually and necessarily incurred and are reasonable as to quantum. The Court notes that, although the applicants have not yet actually paid the legal fees stipulated in the contract, they are bound to pay them pursuant to a contractual obligation. Accordingly, in so far as the lawyer is entitled to seek payment of his fees under the contract, those fees were "actually incurred" (see *Pirali Orujov v. Azerbaijan*, no. 8460/07, § 74, 3 February 2011). Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award each applicant the sum of EUR 6,000, plus any tax that may be chargeable to the applicants.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicants' ill-treatment by the police;

4. *Holds* that there has been a violation of Article 3 of the Convention as regards the lack of an effective investigation;

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

6. *Holds* that there is no need to examine separately the applicants' complaints under Article 5 § 3 of the Convention;

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

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

9. *Holds* that there is no need to examine separately the applicants' complaints under Article 8 and Article 18 of the Convention taken in conjunction with Article 8;

10. *Holds* that there has been a violation of Article 10 of the Convention;

11. *Holds*
    (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent state at the rate applicable at the date of settlement:
        (i) EUR 30,000 (thirty thousand euros), plus any tax that may be chargeable, to each applicant, in respect of non-pecuniary damage;

(ii) EUR 6,000 (six thousand euros) to each applicant, plus any tax that may be chargeable to the applicants, 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;

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

Done in English, and notified in writing on 13 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Síofra O'Leary
President

APPENDIX

No.	Applicant's name, date of birth, place of residence	Application nos. and dates of introduction	Subject matter of the applications
1.	**Giyas IBRAHIMOV** 03/08/1994 Baku	63571/16 25/10/2016	Complaints under Articles 5 and 18 of the Convention relating to the applicant's arrest, pre-trial detention and prosecution
		2890/17 20/12/2016	Complaints under Article 3 of the Convention relating to the applicant's alleged ill-treatment
		39541/17 08/05/2017	Complaints under Articles 8 and 18 of the Convention relating to the search and seizure measures
2.	**Bayram MAMMADOV** 01/03/1995 Baku	74143/16 10/11/2016	Complaints under Articles 5 and 18 of the Convention relating to the applicant's arrest, pre-trial detention and prosecution
		2883/17 20/12/2016	Complaints under Article 3 of the Convention relating to the applicant's alleged ill-treatment
		39527/17 03/05/2017	Complaints under Articles 8 and 18 of the Convention relating to the search and seizure measures