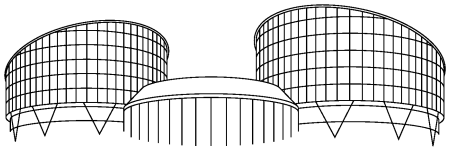

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF EMIN HUSEYNOV v. AZERBAIJAN

(Application no. 59135/09)

JUDGMENT

STRASBOURG

7 May 2015

FINAL

07/08/2015

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Emin Huseynov v. Azerbaijan,

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

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

Having deliberated in private on 14 April 2015,

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

PROCEDURE

1. The case originated in an application (no. 59135/09) against the Republic of Azerbaijan lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an Azerbaijani national, Mr Emin Rafik oglu Huseynov (*Emin Rafik oğlu Hüseynov* - "the applicant"), on 27 October 2009.

2. The applicant was represented by Mr R. Hajili and Mr E. Sadigov, lawyers practising in Azerbaijan. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicant alleged that he had been ill-treated by the police and that the domestic authorities had failed to carry out an effective investigation in this respect. He further alleged that he had been unlawfully deprived of his liberty and that the police intervention of 14 June 2008 had constituted an unlawful interference with his rights to freedom of expression and assembly.

4. On 21 June 2013 the application was communicated to the Government. In addition, third-party comments were received from the non-governmental organisation "Article 19", which had been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Baku.

6. He is a person with a Category 2 disability.

7. The applicant is an independent journalist and the chairman of the Institute for Reporters' Freedom and Safety ("IRFS"), a non-governmental organisation specialising in the protection of journalists' rights. He also worked as a reporter for the news agency *Turan Information Agency*.

A. Events of 14 June 2008

1. The applicant's version of the events

8. On 14 June 2008 a group called the "Che Guevara Fan Club" held a gathering at a private café in Baku to celebrate the eightieth anniversary of the birth of Che Guevara. The café in question was located in the basement of a building in the city centre and there were about twenty-five attendees in the gathering. The applicant, accompanied by two other colleagues (R.A. and M.H.) from the IRFS, attended this gathering.

9. The gathering began at noon and approximately thirty minutes later about thirty police officers entered the café. Some of them were in police uniform and others were in plain clothes. They suspended the gathering and announced that they were going to take the attendees to the police station.

10. The applicant identified himself, informing the police officers that he was a journalist and the chairman of the IRFS. He had with him his identity card and the card confirming that he was the chairman of the IRFS. The applicant also asked the police officers to identify themselves and to release his arrested colleagues. He further informed the *Turan Information Agency* by telephone about the police intervention. In response, one of the police officers, who was apparently in charge of the intervention, ordered other police officers to take the applicant to the police station.

11. According to the applicant, he was taken to a police car by four police officers, who used force against him. In particular, they punched and kicked him in the stomach.

12. In support of his version of events, the applicant relied on written eyewitness statements from R.A. and M.H., dated respectively 23 June 2008 and 24 June 2008, who confirmed that the applicant had informed the police officers that he was a journalist and the chairman of the IRFS before asking the police officers to release them. A police officer had then instructed other police officers to arrest the applicant and they had used force against him while taking him to a police car.

13. After his arrival at the police station, the applicant had been separated from the others who had been arrested and had been taken to the office of the Deputy Head of Nasimi District Police Station no. 22, A.K. Four police officers had entered the room and had threatened the applicant in the presence of A.K. One of the police officers, O.A., had, according to the applicant, shouted at him and had taken out his gun. Hitting his gun on the table, he had shouted "I can eliminate you", "I can arrest you", "I can send you to jail". Then he had pushed down the applicant's head by pressing on the back of his neck so that his head hit the table. The applicant had warned the police officer that he was a person with a Category 2 disability and that his health was fragile. At that point O.A. had struck the applicant in the neck with his elbow; as a result, the applicant had lost consciousness.

14. In support of his version of events, the applicant relied on the above-mentioned written eyewitness statements from R.A. and M.H. In particular, R.A. submitted in his witness statement that, when he was in the corridor in the police station, the applicant was taken to the office of the Deputy Head of Nasimi District Police Station no. 22. He had then heard someone who was shouting at the applicant saying "I can eliminate you", "I can send you to jail".

15. When the applicant regained consciousness, he had asked the police officers to call an ambulance because he did not feel well. They allegedly refused to do so, but had taken him out of the room. The applicant's colleagues had seen him in the corridor and had asked other members of the IRFS to call an ambulance. They had also informed the media about the applicant's ill-treatment by the police.

16. In the meantime, some journalists, human rights defenders and youth movement activists who had been informed of the arrest of the applicant and his colleagues had begun gathering in front of the police station.

17. At around 4 p.m. two police officers accompanied the applicant to the door leading out of the police station, but the applicant had been able to take only a few steps and had then again lost consciousness. In support of his version of events, the applicant relied on written eyewitness statements from I.A. (journalist), R.H. (civil society activist) and M.A. (director of the *Turan Information Agency*), who were at that time present in front of the police station. The witnesses stated that, when the applicant was taken out of the police station, he was unconscious and was taken by an ambulance, which was called by them, to hospital.

18. At 5.20 p.m. the applicant was admitted to hospital with the diagnosis of traumatic brain injury and contusion of the soft tissues around the nape of his neck. The applicant remained in the intensive care unit of the hospital for four days. He was released from hospital on 25 June 2008.

19. The events of 14 June 2008 attracted significant public and media interest both inside the country and internationally. In particular, a number

of human rights organisations, including Human Rights Watch, Amnesty International, expressed concern over the applicant's arrest and ill-treatment by the police, asking the domestic authorities to conduct an effective investigation into the incident.

2. The Government's version of the events

20. On 14 June 2008 the police intervened in the gathering in question on the basis of a complaint from people living in the neighbourhood of the café, who complained about noise and the behaviour of those attending. The applicant and other attendees who were unable to produce their identity cards were taken to the police station but were released once their identity had been established. During his stay at the police station the applicant was not ill-treated by the police.

B. The criminal inquiry

21. A criminal inquiry was launched by Nasimi District Police Station no. 22 in connection with the information about the applicant's admission to the Clinical Medical Centre with injuries.

22. On 15 June 2008 the applicant was questioned in hospital by an investigator from Nasimi District Police Station no. 22. The applicant described in detail the circumstances of his arrest and detention by the police on 14 June 2008. In particular, he stated that on 14 June 2008 he had attended the gathering commemorating the eightieth anniversary of the birth of Che Guevara, which had been interrupted by a police intervention. When he protested about the arrest of his journalist colleagues on the orders of the police officer who was apparently in charge of the intervention, four police officers forcibly took him to a police car. Following his arrival at Nasimi District Police Station no. 22, he was taken to the room of the Deputy Head of the police station. Other police officers were also in the room and one of them, who was wearing black sunglasses, began insulting him. He then began threatening him, took out his gun and shouted at him. The same police officer also struck him in the neck, as a result of which he lost consciousness. The police officers then took him out of the room.

23. While the criminal inquiry was still pending, on 17 June 2008 the spokesman for the Ministry of Internal Affairs, E.Z., in an interview with the *Turan Information Agency*, stated as follows concerning the applicant's arrest and alleged ill-treatment by the police:

> "The statements made to the media by the chairman of the Institute for Reporters' Freedom and Safety, Emin Huseynov, alleging that he was subjected to duress by the police are not true. Even the allegations published in the media are contradictory."

He further continued:

"On 14 June a group of people held an unauthorised gathering at a café. The police requested the interruption of the unauthorised gathering. Twenty people were taken to Nasimi District Police Station no. 22 in order to establish their identity and to conduct the relevant explanatory interviews (*izahat işləri*). They were all released following the explanatory interviews. At that time, Emin Huseynov said that he did not feel well. An ambulance was called immediately. It was established during the medical examination that his health problem was related to his previous diseases. It was established during the medical examination that E. Huseynov had lost consciousness because his blood pressure reached 190."

24. According to the applicant, he was examined by a forensic expert in hospital on 18 June 2008. The forensic report dated 23 June 2008 provides that the examination began on 15 June 2008 and ended on 20 June 2008 without specifying the exact date of the applicant's examination by the forensic expert in hospital. The forensic report of 23 June 2008 reads:

"Questions addressed to the forensic expert:

1. What kind of injuries are there on E. Huseynov's body? What are their degree of gravity and characteristics? In which order and with which instrument were they inflicted? Could these injuries be sustained as a result of a fall, a beating or were they inflicted by E. Huseynov himself?

2. Does the date of infliction of the injuries on the body of citizen E. Huseynov correspond to the date indicated in the descriptive part of the decision?

Information about the case

It appears from the decision that a report in connection with the information that citizen E. Huseynov, who resides in ..., has sustained injuries was assigned to me. E. Huseynov, who was questioned during the inquiry, stated that on 14 June 2008 a person that he did not know had struck him in the neck in Nasimi District Police Station no. 22. Citizen E. Huseynov attended the Clinical Medical Centre in connection with his injuries.

The examination was carried out in the resuscitation and intensive care unit of the Clinical Medical Centre of the Baku City Main Health Department in the presence of the lawyer Rashid Hajili. According to the person examined, at approximately 12.30 p.m. – 1 p.m. on 14 June 2008 during an event dedicated to the eightieth anniversary of the birth of Che Guevara in café Alaturka, plain clothes persons took him and other attendees to Nasimi District Police Station no. 22. He was struck in his head at that moment and later at the police station. He replies in detail and precisely to the questions about the incident and other questions.

1. The person examined is a man of medium height, normal build and slightly overweight.

2. No injuries or objective signs of injury were noticed on the hairy part of the head, the face and other parts of the body.

It appears from medical record no. 5190 of the patient of the Clinical Medical Centre of the Baku City Main Health Department that at 5.20 p.m. on 14 June 2008 E. Huseynov, who is 29 years old, was admitted to the resuscitation and intensive care unit by a team from emergency unit no. 2 with the diagnosis of traumatic brain injury and contusion of the soft tissues around the nape of the neck (*qapalı kəllə beyin travması, ənsə nahiyəsinin yumşaq toxumlarının əzilməsi*). It was not possible for him to describe his complaints when he was admitted to hospital. According to those who

brought him to hospital, the patient sustained the injury as a result of a beating. His general state was serious. The skin and mucous membrane were of ordinary color. The respiration was vesicular. The respiratory rate was 19 breaths per minute, the blood pressure was 190/120 mm Hg, the heart pulse was beating 120 per minute. The abdomen was not hard and there was no pain. Neurological status: his conscious awareness was impaired to the point of deafness. His reaction to bright light was positive, he turned away from it. His pupils and tendon reflexes were at equal distance from each side and they were alive. Meningitis symptoms and pathological reflexes were not observed. In the examination no injury was noticed on the skin. Diagnosis: neurological reaction (*nevrotik reaksiya*). At 5.25 p.m. on 14 June 2008 the patient, who was in a serious neurological state (*nevrotik vəziyyət*), was directly admitted from the admission unit to the resuscitation and intensive care unit. His conscious awareness was in soporous state. The tendon and corneal reflexes were alive. The skin and mucous membrane which may be observed by eye were pale. The blood pressure was 190/110 mm Hg, the heart pulse was beating 116 per minute. The respiration was normal and sufficient. The urination was normal. Hb-120 g/l, leucocytes 8,4-10 g/l. On 15 June 2008 there was no pathological change in side projected X-ray examinations of side and neck vertebras of the cranium. At 10 a.m. on 15 June 2008 the comment of the doctor on duty: the patient's state was stable. He was conscious and replied to questions. His pupils were at equal distance from each side and corneal reflexes were alive. There were no meningitis elements. The skin and observable mucous membrane were pale ... (illegible), the heart pulse was beating 96 per minute, the blood pressure was 130/90 mm Hg ... (illegible), the respiratory rate was 20 breaths per minute ... (illegible). His tongue was wet, the abdomen was not hard, the urination was adequate. It was written in the summary of the cerebral computed tomography opinion dated 17 June 2008 that intraparenchymal traumatic pathological changes were not observed in E. Huseynov. In the computed tomography examination of 17 June 2008 pathological change in the neck area and traumatic change in the neck part of the vertebral column were not revealed. In the ultrasound examination of 17 June 2008 no liquid was revealed in the abdomen and there was no hematoma in the parenchymal organs. It was noted in the log dated 17 June 2008 that an examination was carried out by the doctors, the experts in neurotrauma, A.Y. and Q.I., the head of the resuscitation and intensive care unit, V.R., the experts in resuscitation, C.N. and F.T., and the following were noted: his general state was stable, he complained about headaches. The blood pressure was 120/70 mm Hg, the heart pulse was beating 88 per minute. Neurological status: he was conscious and adequately replied to questions. His pupils and tendon reflexes were at equal distance from each side and they were alive. No change was observed in the cranial-brain nerves. There were no meningitis symptoms. Taking into account the patient's subjective complaints, it was desirable to subject him to a computed tomography examination. Bearing in mind the patient's state, it was decided that the further examination and treatment of the patient be continued in the neurotrauma department. It appears from the subsequent log that the patient was examined jointly by the assistant professor M. and the head of the department. It was further indicated that E. Huseynov's illness was related to extended osteochondrosis of the vertebral column, numerous disc protrusions in the back and neck areas (C 4-5, C 5-6, C 6-7, L 3-4, L 5, S 1), chronic dyscirculatory encephalopathy and vestibulopathy. His treatment in connection with the above-mentioned diseases is ongoing. Clinical diagnosis: neurological reaction, vertebrogenic syndrome, C 4-5, C 5-6, C 6-7 intervertebral disc protrusions, paroxysmal vein distention.

The forensic expert: C.A.

Conclusion

Relying on the forensic examination of E. Huseynov, born in 1979, and the content of the medical documents, I conclude as follows in reply to questions addressed in the decision:

1. No injuries or objective signs of injury (bruise, abrasion, wound, swelling, etc.) were noticed on the body of E. Huseynov.

2. E. Huseynov's in-patient treatment was related to his previous diseases - extended osteochondrosis of the vertebral column, numerous disc protrusions in the back and neck areas (C 4-5, C 5-6, C 6-7, L 3-4, L 5, S 1), chronic dyscirculatory encephalopathy and vestibulopathy."

25. The applicant was not provided with a copy of the forensic report.

26. On 25 June 2008 Nasimi District Police Station no. 22 issued an explanation (*arayış*) concerning the police intervention of 14 June 2008. The relevant part of this document, signed by the Head of Nasimi District Police Station no. 22, M.T., reads:

"On the basis of the information that about fifty people had gathered at café "Alaturka" in the basement of building no. 6 at 28 May Street in Baku on 14 June 2008, at around 1 p.m. police officers from the Baku City Police Office took measures in order to identify the persons gathered in this place and to establish the purpose of the gathering, and twenty-two of them were taken to Nasimi District Police Station no. 22.

After these individuals had arrived at Police Station no. 22 at 1.55 p.m., they were registered in the "apprehended persons' registration log" *(gətirilmiş şəxslərin qeydiyyat kitabı*) and were released at 4.30 p.m. At the police station, their identity was established and statements were taken from nine of them in order to establish the purpose of their gathering in that location.

... At the police station, their identity was established and they were released following a "prophylactic conversation" (*profilaktik söhbət*). It was also established that Huseynov Emin Rafik oglu, who presented a document stating that he was the chairman of the Institute for Reporters' Freedom and Safety, was among the persons apprehended..."

27. By a decision of 27 June 2008, the investigator refused to institute criminal proceedings, finding that there was no evidence that the applicant had been ill-treated by the police. The relevant part of the decision reads:

"It was established during the examination of patients' reception log in the Clinical Medical Centre that citizen E. Huseynov was admitted to the hospital with the diagnosis of neurological reaction at 5.20 p.m. on 14 June 2008. This was also noted in extract no. 5196, dated 20 June 2008, from the patient's in-patient and out-patient medical record provided by the Clinical Medical Centre.

In connection with the above-mentioned, the forensic report no. 143/TM of 23 June 2008, ordered on 15 June 2008, which was carried out by ... provides in reply to the questions addressed to the expert, on the basis of E. Huseynov's forensic examination and the content of the medical documents, that no injuries or objective signs of injury (bruise, abrasion, wound, swelling, etc.) were noticed on the body of E. Huseynov and that E. Huseynov's in-patient treatment was related to his previous diseases - extended osteochondrosis of the vertebral column, numerous disc protrusions in the back and

neck areas (C 4-5, C 5-6, C 6-7, L 3-4, L 5, S 1), chronic dyscirculatory encephalopathy and vestibulopathy.

It appears from the evidence collected in connection with the fact that citizen Huseynov Emin Rafik oglu had sustained an injury and from the forensic report dated 23 June 2008 ... that there were no injuries or objective signs of injury on E. Huseynov's body. As no criminal act has been established in this respect, it is appropriate to refuse to institute criminal proceedings."

28. The applicant was not informed of the decision of 27 June 2008 concerning the investigator's refusal to institute criminal proceedings.

C. Remedies used by the applicant

1. The criminal proceedings

29. On 16 March 2009 the applicant lodged a criminal complaint with the Nasimi District Court. Relying on Articles 3, 5, 10 and 11 of the Convention, he complained that he had been ill-treated by the police during his arrest and whilst in police custody, and that the domestic authorities had failed to conduct an effective investigation in this respect. The applicant further complained that he had been unlawfully deprived of his liberty and that the police intervention of 14 June 2008 had been unlawful and had constituted an unjustified interference with his rights to freedom of expression and assembly. The applicant pointed out, in particular, that the investigator had questioned neither the police officers who had been involved in the ill-treatment nor the other witnesses. He also stated that he had not learned about the existence of the investigator's decision of 27 June 2008 until 3 March 2009 and that he had never been provided with a copy of the forensic report.

30. On 31 March 2009 the Nasimi District Court dismissed the applicant's complaint, finding the investigator's decision lawful. The court's decision was silent as to the applicant's particular complaints. The relevant part of the decision reads:

"... It was established during the examination of patients' reception log in the Clinical Medical Centre that citizen E. Huseynov was admitted to the hospital with the diagnosis of neurological reaction at 5.20 p.m. on 14 June 2008. This was also noted in extract no. 5196, dated 20 June 2008, from the patient's in-patient and out-patient medical record provided by the Clinical Medical Centre.

It appears from the forensic report ... that no injuries or objective signs of injury (bruise, abrasion, wound, swelling, etc.) were noticed on E. Huseynov's body. It was noted that E. Huseynov's in-patient treatment was related to the previous diseases ... that he had suffered.

Therefore, the court considers that in carrying out a preliminary examination in compliance with Article 207 of the Code of Criminal Procedure for establishing whether there were sufficient basis to institute criminal proceedings the investigator took all the necessary steps and, as it was not established that there had been a

criminal element in the examined fact, a justified and lawful decision on refusal to institute criminal proceedings was adopted."

31. On 6 April 2009 the applicant appealed against this decision, reiterating his previous complaints. He also complained that the investigator had not arranged an identity parade including the police officer O.A. and neither had he questioned the police officers involved in his arrest and detention and, in particular, the Deputy Head of the Nasimi District Police Station no. 22 in whose room and whose presence he had been ill-treated. He had failed to obtain video recordings from security cameras situated in the police station in question. The applicant also disputed the conclusions of the forensic report, pointing out that he had not been provided with a copy of it.

32. On 27 April 2009 the Baku Court of Appeal upheld the first-instance court's decision.

2. The civil proceedings

33. In the meantime, the applicant also lodged a civil action against the Nasimi District Police Office, asking for compensation. Relying on Articles 3, 5, 10 and 11 of the Convention, he complained that he had been ill-treated by the police, that he had been arrested and taken to the police station unlawfully, and that the police intervention in the gathering had constituted an unlawful interference with his rights to freedom of expression and assembly. In support of his claim, the applicant relied on written eyewitness statements from R.A. and M.H., who stated that police officers had used force against the applicant during his arrest. They also stated that when the applicant was in the room of the Deputy Head of Nasimi District Police Station no. 22, they had heard someone shouting at the applicant "I can eliminate you", "I can send you to jail". When the applicant had been taken out of the room, he did not feel well.

34. On 25 July 2008 the Nasimi District Court refused to admit his action, finding that it did not comply with the procedural requirements for lodging a complaint.

35. On 2 September 2008 the Baku Court of Appeal upheld the first-instance court's decision.

36. On 17 November 2008 the Supreme Court quashed the Baku Court of Appeal's decision and remitted the case to the lower courts for a new examination.

37. On 17 June 2009 the Nasimi District Court, having examined the applicant's action on the merits, decided to dismiss it. The court found that the applicant had been taken to the police station because he had not had his identity card on him. The court also held that the police intervention had been lawful, since the gathering at the café in the city centre disturbed other people present and consequently the police had intervened. As regards the applicant's alleged ill-treatment, the court held that it had not been

established that the applicant had been ill-treated by the police. The relevant part of the judgment reads:

> "It was established at the court hearing that an investigator from Nasimi District Police Station no. 22 had examined the fact that E. Huseynov had sustained injuries, that it had been decided to refuse to institute criminal proceedings on the basis of the collected materials because no criminal act had been established, and that this decision had not been challenged.
>
> Moreover, it was established at the court hearing on the basis of witness statements that the applicant had been taken to Nasimi District Police Station no. 22 because he had not had his identity card on him, that he had been detained for a certain period of time, and that he had been then released following the establishment of his identity.
>
> It was also established at the court that E. Huseynov had been previously sustained brain injury and regularly underwent medical treatment in Azerbaijan and abroad for a long period of time. Unexpected health problems were previously observed in his case and the fact that he had felt unwell after having been brought to the police station was not related to any duress, but to his previous illness.
>
> Furthermore, it was not established at the court hearing that the applicant had sustained a bodily injury or subjected to physical violence, beaten or been under duress at the police station."

38. On 3 August 2009 the applicant appealed against this decision, reiterating his previous complaints.

39. On 14 October 2009 the Baku Court of Appeal dismissed the applicant's appeal.

40. On 7 May 2010 the Supreme Court upheld the lower courts' judgments.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Azerbaijan

41. Article 46 (III) of the Constitution of the Republic of Azerbaijan reads:

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

42. Article 49 of the Constitution provides:

> "I. Everyone has the right to freely assemble together with others.
>
> II. Everyone has the right, upon notification to relevant Government bodies in advance, to assemble peacefully with others, without arms, and to hold rallies, meetings, demonstrations, street marches and pickets."

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

43. Article 207 of the CCrP provides the rules concerning the examination of the information about committed criminal offences by the investigating authorities. In accordance with this Article, an investigator or the prosecutor in charge of the case, after the examination of the information about the commission of a criminal offence, should adopt a decision instituting criminal proceedings, refusing to institute criminal proceedings, or transferring the information to the relevant investigating authority or the court in case of private criminal prosecution.

44. In accordance with Article 212.2 of the the CCrP, any person providing information about a committed or planned criminal offence should be provided within twenty-four hours with a copy of the investigator's decision concerning refusal to institute criminal proceedings.

C. Law on Freedom of Assembly of 13 November 1998, as in force at the material time

45. Article 4.1 provided that the right to hold gatherings in places which are in private ownership is not regulated by this Law.

46. Article 7 provides that any restriction on freedom of assembly may be put in place only by law and for the purposes of protecting the following interests necessary in a democratic society: 1) for the protection of the interests of public and state security 2) for preventing the disturbance of public order 3) for the prevention of disorder or crime 4) for the protection of the health of the population 5) for the protection of morals 6) for the protection of the rights and freedoms of others.

47. Article 14 sets out the powers and duties of the police in connection with the holding of an assembly. According to Article 14.I.3, the police have the right to suspend an assembly, if necessary, when the conduct of the assembly does not satisfy the conditions provided in the prior written notification. Article 14.II also provides that the police have the right to inform organisers of and participants in an assembly of its suspension and dispersal, to order organisers and participants to use all available means for suspension of the assembly and dispersal of participants, to warn organisers and participants that force will be used in the event that an order to suspend the assembly and for its participants to disperse is not executed, and to use appropriate force to ensure the suspension of the assembly and the dispersal of the participants. Use of physical force or special equipment by the police should in all circumstances be proportional to the danger in question (Article 14.6).

III. RELEVANT INTERNATIONAL DOCUMENT

48. The relevant extract from the European Commission for Democracy through Law (Venice Commission) Opinion (25 October 2006, opinion no. 384/2006; CDL-AD (2006)034)) on the Law on Freedom of Assembly of 13 November 1998 reads:

> "Article 4.1
>
> 21. Article 4.1 provides *inter alia* that peaceful assemblies "in places which are in private ownership" shall not be regulated by the Law. Bearing in mind that the ECHR applies to all types of assembly and the OSCE/ODHIR Guidelines do not exclude that private property can be used as a venue for a public assembly, it is positive that assemblies on private property are exempted from any notification requirement as well as from all other requirements provided for in the Law. This provision shall therefore not be interpreted as prohibiting such kind of spontaneous assemblies on private property. If the assembly is peaceful it should be allowed."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that he had been ill-treated both during his arrest and whilst in police custody, and that the domestic authorities had failed to investigate his allegation of ill-treatment. Article 3 of the Convention reads:

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

A. Admissibility

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

B. Merits

1. Alleged ill-treatment of the applicant by the police

(a) The parties' submissions

51. The Government submitted that the applicant had not been subjected to inhuman or degrading treatment. In this connection, they relied on the conclusions of the forensic report according to which there were no injuries

or signs of injury on the applicant's body. The Government also noted that the applicant's in-patient treatment was related to the previous diseases that he had suffered and that he had been admitted to the hospital with the diagnosis of neurological reaction. They further noted that other persons who had been brought to Police Station no. 22 on 14 June 2008 stated that they had not been subjected to any kind of pressure or ill-treatment by the police.

52. The applicant contested the Government's submissions. He argued that he had been ill-treated by the police during his arrest and while in the room of the Deputy Head of Nasimi District Police Station no. 22. In this connection, he pointed out that during his arrest, on the orders of the police officer in charge of the dispersal of the gathering, four police officers had used force against him while taking him to a police car. In particular, they had punched and kicked him in the stomach. According to the applicant, this treatment was intended to arouse in him a feeling of fear, suffering and inferiority by humiliating him in front of other attendees at the gathering. In support of his claim, the applicant relied on eyewitness statements from R.A. and M.H.

53. As to his ill-treatment in the room of the Deputy Head of Nasimi District Police Station no. 22, the applicant submitted that the police officer O.A. had taken out his gun and had hit it on the table, shouting "I can eliminate you", "I can arrest you", "I can send you to jail". Then he had pushed down his head by pressing on the back of his neck so that his head hit the table. He had warned the police officer that he was a person with a Category 2 disability and that his health was fragile. O.A. had nonetheless struck him in the neck with his elbow; as a result, he had lost consciousness. In support of his allegation, the applicant relied on the fact that he had been admitted to hospital with the diagnosis of traumatic brain injury and contusion of the soft tissues around the nape of his neck and on witness statements from R.A. and M.H.

(b) The Court's assessment

(i) General principles

54. The Court reiterates that Article 3 enshrines one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, Article 3 makes no provision for exceptions, and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation (see *Assenov and Others v. Bulgaria*, 28 October 1998, § 93, *Reports of*

Judgments and Decisions 1998-VIII, and *Selmouni v. France* [GC], no. 25803/94, § 95, ECHR 1999-V).

55. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Assessment of this minimum level depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25; *Kudła v. Poland* [GC], no. 30210/96, § 91, ECHR 2000-XI; and *Peers v. Greece*, no. 28524/95, § 67, ECHR 2001-III). The Court has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering. It has deemed treatment to be "degrading" because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see *Kudła*, cited above, § 92).

56. As to the distribution of the burden of proof, the Court reiterates that "[w]here an individual, when taken in police custody, is in good health, but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention" (see *Tomasi v. France*, 27 August 1992, §§ 108-11, Series A no. 241-A, and *Selmouni*, cited above, § 87).

57. In assessing evidence, the Court adopts the standard of proof "beyond reasonable doubt". Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, among many other authorities, *Avşar v. Turkey*, no. 25657/94, § 282, ECHR 2001-VII). The Court is sensitive to the subsidiary nature of its role and recognises that it must be cautious in assuming the role of a first-instance tribunal of fact where this is not rendered unavoidable by the circumstances of a particular case (see, for example, *McKerr v. the United Kingdom* (dec.), no. 28883/95, 4 April 2000). Nevertheless, where allegations are made under Article 3 of the Convention, the Court must apply particularly thorough scrutiny, even if certain domestic proceedings and investigations have already taken place (see *Avşar*, cited above, §§ 283-84, and *Muradova v. Azerbaijan*, no. 22684/05, § 99, 2 April 2009).

(ii) Application of these principles to the present case

58. The Court observes at the outset that the parties are in dispute about the question of whether the applicant was subjected to the use of force by the police at all (see *Rizvanov v. Azerbaijan*, no. 31805/06, §§ 46-48, 17 April 2012, compare also with *Muradova*, cited above, § 107). In particular, while the Government rejected the applicant's ill-treatment allegations relying on the conclusions of the forensic report that there were

no injuries or signs of injury on the applicant's body and that his in-patient treatment was related to his previous diseases, the applicant maintained his complaint relying on the fact that he had been admitted to hospital with the diagnosis of traumatic brain injury and contusion of the soft tissues around the nape of his neck and on witness statements. The applicant also alleged, relying on the same witness statements, that he had been subjected to psychological ill-treatment in that the police officer O.A. had threatened him with death and detention at the police station (see paragraphs 51-53 above).

59. The Court, based on all the materials in its possession, points out at the outset that although the parties differ in their view as to the above-mentioned findings of the forensic report, other facts relating to the events of 14 June 2008, which were also confirmed by the forensic report of 23 June 2008, are not in dispute. In particular, it does not appear to be in dispute that on 14 June 2008 the applicant was transported by ambulance directly from Nasimi District Police Station no. 22 to the Clinical Medical Centre. When he was admitted to hospital, he was unconscious (in soporous state) and in a serious neurological state (*nevrotik vəziyyət*), and was directly admitted from the admission unit to the resuscitation and intensive care unit (see paragraph 24 above). The parties also did not dispute the finding of the forensic report of 23 June 2008 according to which the applicant was diagnosed with the neurological reaction in the hospital.

60. As regards the findings of the forensic report disputed between the parties, the Court firstly observes that the forensic report dated 23 June 2008 did not specify the exact date of the applicant's examination by the forensic expert providing solely that the examination began on 15 June 2008 and ended on 20 June 2008. The applicant alleged that the forensic expert examined him in the hospital only on 18 June 2008, an allegation which was not disputed by the Government. It is not clear why the forensic expert waited three days after the official institution of the forensic examination before examining the applicant in the hospital. No explanation for this delay was given by the Government.

61. The Court also observes that it is true that the forensic report of 23 June 2008, without directly calling into question the initial diagnosis of traumatic brain injury and contusion of the soft tissues around the nape of his neck, concluded that there were no injuries or signs of injury on the applicant's body and that his in-patient treatment was related to his previous diseases. In particular, it appears from the report that while the expert reached a conclusion which clearly differed from the initial diagnosis of the applicant made during his admission to the hospital, the expert did not make any assessment about the initial diagnosis explaining why he departed from it. The Court considers in this connection that in such circumstances where an expert - following an examination carried out four days after the incident – came to a conclusion which differs from the initial diagnosis established

during the applicant's admission to the hospital it was legitimately expected from him to give a detailed explanation as to why he reached such a conclusion. However, in the present case the expert was silent in this respect.

62. In any event, the Court notes that, although the forensic report came to such conclusions, it was silent as to the reason why on 14 June 2008 the applicant was admitted to the Clinical Medical Centre in soporous and serious neurological state and was directly admitted from the admission unit to the resuscitation and intensive care unit. In particular, the forensic report did not provide any explanation about the event or factor which resulted in the applicant's admission to hospital and triggered the applicant's previous diseases leading to his in-patient treatment until 25 June 2008.

63. In this connection, the Court notes that the very fact that an individual, even with a history of health problems, when taken into custody, has no apparent health problems, but is transferred by ambulance from a police station to a hospital, raises a serious issue under Article 3 of the Convention and it is incumbent on the State to provide a plausible explanation for such a situation. The Court accepts in this respect that in some circumstances a measure, such as an arrest or a detention, may cause an individual, in particular with previous health problems - in the absence of duress or use of force by the police - stress, psychological tension and inevitable suffering inherent in any measure which could trigger his previous diseases. However, in the present case the Government contented themselves with submitting that the applicant's in-patient treatment was related to his previous diseases, without giving any explanation and account of events which could explain why the applicant was subsequently transferred by ambulance from the police station to the hospital. As noted above, nor did the forensic report provide any explanation in this respect. In these circumstances, the Court considers that the respondent Government failed to discharge their burden of proof and to submit any evidence refuting the applicant's account of events.

64. The Court notes that the applicant's version of events was also supported by the eyewitness statements. In particular, R.A. and M.H. stated that police officers had used force against the applicant during his arrest. They further stated that they had heard someone shouting and threatening the applicant in the office of the Deputy Head of Nasimi District Police Office no. 22 and when the applicant had been taken out of the office, he did not feel well. As to the Government's argument that other persons brought to Nasimi District Police Station no. 22 on 14 June 2008 stated that they had not been subjected to any kind of pressure or ill-treatment by the police, the Court finds this argument irrelevant in respect of the applicant's complaint.

65. Having regard to the available evidence supporting the applicant's version of events and to the Government's failure to provide any

explanation about the event or factor resulting in the applicant's admission to hospital on 14 June 2008 and triggering his previous diseases, the Court considers that the applicant's account of events was accurate and that the event or factor resulting in his admission to hospital and allegedly triggering his previous diseases was the applicant's physical and psychological ill-treatment during his arrest and at the police station on 14 June 2008.

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

67. 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

68. The Government submitted that the domestic authorities had conducted an effective investigation of the applicant's allegation of ill-treatment. They pointed out that following the examination of the applicant's allegation of ill-treatment, the investigator in charge of the case had refused to institute criminal proceedings. The Government further submitted that the domestic courts had also examined the applicant's claim. They dismissed the applicant's claim, finding that he had not been subjected to ill-treatment.

69. The applicant contested the Government's submissions, noting that the domestic authorities had failed to conduct an effective investigation into his ill-treatment. He argued in this respect that the investigator had failed to identify and question the police officers who had ill-treated him, that the investigation had not been independent and impartial, and that he had not been promptly provided with copies of the forensic report and the investigator's decision of 27 June 2008. He also submitted that the statement given by the Ministry of Internal Affairs' spokesman to the media concerning his ill-treatment was a characteristic example of the ineffectiveness of the investigation.

(b) The Court's assessment

70. Where an individual raises an arguable claim that he or she has been ill-treated by the police in breach of Article 3, that provision – read in conjunction with the State's general duty under Article 1 of the Convention

to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention" – requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice, and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see *Assenov and Others*, cited above, § 102, and *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).

71. For an investigation required by Article 3 of the Convention to be effective, those who bear responsibility for it and those who carry it out must be independent and impartial, in law and in practice. This calls for not only a lack of any hierarchical or institutional connection with those implicated in the events, but also independence in practical terms (see *Najafli v. Azerbaijan*, no. 2594/07, § 52, 2 October 2012, and *Layijov v. Azerbaijan*, no. 22062/07, § 55, 10 April 2014).

72. An investigation into allegations of ill-treatment must be thorough, meaning that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to form the basis of their decisions (see *Assenov and Others*, cited above, § 103 et seq.). They must take all steps reasonably available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard. Moreover, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the complainant must be afforded effective access to the investigatory procedure (see *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, §§ 134 and 137, ECHR 2004-IV).

73. Turning to the circumstances of the present case, the Court observes that – although the applicant raised an arguable claim that on 14 June 2008 he had been ill-treated by the police during his arrest and in the room of the Deputy Head of Nasimi District Police Office no. 22 – following a criminal inquiry, the investigator at Nasimi District Police Station no. 22 refused to institute criminal proceedings in connection with the applicant's allegation of ill-treatment.

74. The Court has repeatedly stressed that the procedural obligation under Article 3 requires an investigation to be independent and impartial, both in law and in practice (see paragraph 71 above). However, in the present case the applicant's allegation that he had been ill-treated by the police officers of Nasimi District Police Office no. 22 was examined by an investigator at Nasimi District Police Office no. 22 who refused to institute

criminal proceedings in connection with the applicant's ill-treatment. The applicant's complaint was therefore examined by the police station where the agent who had allegedly committed the offence was based. In the Court's view, an investigation by the police into an allegation of misconduct by one of its own officers could not be independent (see *Layijov*, cited above, § 55). In this connection, the Court notes that only three days after the beginning of the criminal inquiry and without waiting for its conclusions, the spokesman for the Ministry of Internal Affairs stated to the media that the applicant had not been ill-treated by the police and that his allegations were not true (see paragraph 23 above). The Court considers that this statement on behalf of the Ministry of Internal Affairs, which was the employer of the investigator in charge of the investigation, cast substantial doubts on the independence of the investigation from the beginning.

75. The Court further observes that the investigating authorities failed to inform the applicant of the progress of the criminal inquiry. In particular, the applicant was not provided with the investigator's decision of 27 June 2008 refusing to institute criminal proceedings and learned of the existence of this decision only in March 2009. The investigator also failed to provide him with a copy of the forensic report.

76. The foregoing considerations are sufficient to enable the Court to conclude that there was no effective investigation of the applicant's allegation of ill-treatment. There has accordingly been a violation of Article 3 of the Convention under its procedural limb.

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

77. The applicant complained that on 14 June 2008 he had been unlawfully arrested and detained by the police without any legal basis and in breach of Article 5 of the Convention. The relevant part of Article 5 of the Convention reads:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non- compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition"

A. Admissibility

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

B. Merits

1. The parties' submissions

79. The Government submitted that the applicant had not been arrested by the police. They submitted that on 14 June 2008 the police came to the location of the gathering on the basis of a complaint by people living in the neighbourhood of the café, who complained about noise and the behaviour of those attending. The applicant and other attendees who were unable to produce their identity cards were taken to the police station but were released once their identity had been established.

80. The applicant maintained his complaint, reiterating that his arrest and detention by the police had been unlawful. He stated that at about 12.30 p.m. on 14 June 2008 he had been arrested by the police and had not been authorised to leave the police station until 4 p.m. The applicant contested the Government's submissions that he had not produced his identity card, pointing out that he had identified himself as a journalist and the chairman of the IRFS before his arrest.

2. The Court's assessment

81. The Court notes that it must first examine whether in the instant case there was a deprivation of liberty to which Article 5 applies. The Court reiterates that Article 5 of the Convention enshrines a fundamental right, namely the protection of the individual against arbitrary interference by the State with his or her right to liberty. In proclaiming the "right to liberty", paragraph 1 of Article 5 contemplates the physical liberty of the person; its aim is to ensure that no one should be deprived of that liberty in an arbitrary fashion. In order to determine whether there has been a deprivation of liberty, the starting point must be the specific situation of the individual concerned, and account must be taken of a whole range of factors arising in a specific case, such as the type, duration, effects and manner of

implementation of the measure in question. The distinction between a deprivation of liberty and a restriction thereof is merely one of degree or intensity and not one of nature or substance (see *Guzzardi v. Italy*, 6 November 1980, § 92, Series A no. 39, and *Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, § 57, ECHR 2012).

82. The Court further points out that Article 5 § 1 may apply to deprivations of liberty of a very short duration, where applicants are stopped for the purposes of a search for a period which does not exceed thirty minutes (see *Gillan and Quinton v. the United Kingdom*, no. 4158/05, § 57, ECHR 2010 (extracts)) or where the length of time during which the applicant was held at a police station did not exceed forty-five minutes (see *Shimovolos v. Russia*, no. 30194/09, §§ 48-50, 21 June 2011). In the present case, it is undisputed that the applicant was taken to the police station by police officers and that he was not free to leave the premises without their authorisation. The Court thus considers that there was an element of coercion which was indicative of a deprivation of liberty within the meaning of Article 5 § 1 (see *Gillan and Quinton*, cited above, § 57, and *Foka v. Turkey*, no. 28940/95, §§ 74-79, 24 June 2008). In these circumstances the Court finds that the applicant was deprived of his liberty within the meaning of Article 5 § 1.

83. As to exact length of time during which the applicant was deprived of his liberty, the Court observes that the applicant submitted that he had been arrested by the police at approximately 12.30 p.m. on 14 June 2008 and had not been authorised to leave the police station until 4 p.m. on 14 June 2008. These submissions by the applicant were not contested by the Government. Given these facts, the Court considers that the applicant was deprived of his liberty for approximately three hours and thirty minutes.

84. The Court must next ascertain whether the applicant's deprivation of liberty complied with the requirements of Article 5 § 1 and was free from arbitrariness. The Court points out that sub-paragraphs (a) to (f) of Article 5 § 1 contain an exhaustive list of permissible grounds on which people may be deprived of their liberty, and no deprivation of liberty will be lawful unless it falls within one of those grounds (see *Austin and Others*, cited above, § 60). Where the "lawfulness" of somebody's detention is in issue, including the question whether "a procedure prescribed by law" has been followed, the Convention refers essentially to national law and lays down the obligation to conform to the substantive and procedural rules of national law. Compliance with national law is not, however, sufficient: Article 5 § 1 requires in addition that any deprivation of liberty should be consistent with the purpose of Article 5, namely to protect individuals from arbitrariness. What is at stake here is not only the "right to liberty" but also the "right to security of person" (see, among other authorities, *Bozano v. France*, 18 December 1986, § 54, Series A no. 111, and *Wassink v. the Netherlands*,

27 September 1990, § 24, Series A no. 185-A). It is a fundamental principle that no detention which is arbitrary can be compatible with Article 5 § 1 and the notion of "arbitrariness" in Article 5 § 1 extends beyond lack of conformity with national law, so that a deprivation of liberty may be lawful in terms of domestic law but still arbitrary and thus contrary to the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, § 67, ECHR 2008).

85. In the present case, the Government did not submit which paragraph of Article 5 § 1 applied to the applicant's deprivation of liberty. They found it sufficient to observe that the applicant had been taken to the police station because he had failed to produce his identity card.

86. The Court finds that the applicant's deprivation of liberty did not fall under sub-paragraphs (a), (d), (e) and (f) of paragraph 1 of Article 5. Moreover, there is no evidence that the applicant was suspected of "having committed an offence" or that his arrest could be "reasonably considered necessary to prevent his committing an offence". Therefore, his deprivation of liberty was not covered by sub-paragraph (c) of Article 5 § 1.

87. As to the question whether his deprivation of liberty fell within the ambit of sub-paragraph (b) of Article 5 § 1, the Government submitted before the Court that the applicant had been taken to the police station because he had failed to comply with the obligation to produce his identity documents at the request of the police, while the applicant maintained that he had presented documents proving that he was a journalist and the chairman of the IRFS. In this connection, the Court observes that it is apparent from the eyewitness statements of R.A. and M.H. that the applicant identified himself to the police as a journalist and the chairman of the IRFS (see paragraph 12 above) and did not refuse to disclose his identity to the police (see, by contrast, *Vasileva v. Denmark*, no. 52792/99, §§ 36-38, 25 September 2003). Moreover, the Government failed to submit any evidence, such as records, detention orders or any other documentary evidence, in support of their factual claim proving that the applicant had failed to comply with the request of the police to disclose his identity. The Court thus finds that no grounds have been made out which could bring the applicant's detention into any of the other sub-categories of Article 5 § 1.

88. It follows from all the above that the applicant's deprivation of liberty on 14 June 2008 by the police for approximately three hours and thirty minutes was unlawful and arbitrary. There has therefore been a violation of Article 5 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CONVENTION

89. Relying on Articles 10 and 11 of the Convention, the applicant complained that that the police intervention in the gathering at a private café had violated his rights to freedom of expression and assembly.

90. The Court observes that, although the applicant was an independent journalist and the chairman of the IRFS, it is not possible to establish clearly on the basis of the documents submitted to the Court whether the applicant participated in the gathering of 14 June 2008 in his capacity as a journalist covering the event. In such circumstances, the Court considers that the complaint should be examined under Article 11 only, as this provision is *lex specialis* in so far as the circumstances of the present case are concerned. Article 11 of the Convention provides:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state."

A. Admissibility

91. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Moreover, the Court reiterates that the right to freedom of assembly as protected under Article 11 of the Convention may cover both private and public meetings, including an assembly of an essentially social character (see *Djavit An v. Turkey*, no. 20652/92, § 56, ECHR 2003-III, and *Friend, the Countryside Alliance and others v. the United Kingdom* (dec.), nos. 16072/06 and 27809/08, § 50, 24 November 2009) and finds that this provision is applicable in the present case. The Court further notes that the complaint is not inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

1. The parties' submissions

92. The Government submitted that the police intervened in the gathering on the basis of a complaint from people living in the neighbourhood of the café. They further submitted that an assembly held in a private café is not subject to any requirement of notification under domestic law.

93. The applicant maintained his complaint, reiterating that the police intervention had been unlawful and had constituted an unjustified interference with his right to freedom of assembly.

94. The third-party intervener, the NGO "Article 19", submitted that the Government had failed to comply with their positive obligations to protect the exercise of the right to freedom of expression and pointed out that there continues to be impunity in cases involving violence against and the intimidation of journalists in Azerbaijan.

2. The Court's assessment

(a) Whether there was interference

95. The Court notes that it is undisputed between the parties, and the Court agrees, that there was an interference with the applicant's right to freedom of assembly on account of the dispersal by the police of the gathering of 14 June 2008.

(b) Whether the interference was justified

96. The Court reiterates that an interference will constitute a breach of Article 11 unless it is "prescribed by law", pursues one or more legitimate aims under paragraph 2, and is "necessary in a democratic society" for the achievement of those aims (see *Djavit An*, cited above, § 63; *Balçık and Others v. Turkey*, no. 25/02, § 44, 29 November 2007; and *Sergey Kuznetsov v. Russia*, no. 10877/04, § 37, 23 October 2008).

97. The Court also considers it necessary to reiterate that the right to freedom of assembly enshrined in Article 11 is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively (see *Djavit An*, cited above, § 56). Accordingly, States must not only safeguard the right to assemble peacefully, but must also refrain from applying unreasonable indirect restrictions upon that right. In view of the essential nature of freedom of assembly and its close relationship with democracy, there must be convincing and compelling reasons to justify an interference with this right (see *Ouranio Toxo v. Greece*, no. 74989/01, § 36, ECHR 2005-X (extracts), and *Adalı v. Turkey*, no. 38187/97, § 267, 31 March 2005, with further references).

98. Turning to the circumstances of the present case, the Court observes at the outset that the Government failed to refer to any domestic law or provisions which could constitute the legal basis for the dispersal of a gathering held in places which are in private ownership. In this connection, the Court notes that under Azerbaijani law the legal basis for the police intervention in an assembly and its potential dispersal is set out in Articles 7 and 14 of the Law on Freedom of Assembly. However, Article 4.1 of the same Law clearly provided that the right to hold gatherings in places which are in private ownership is not regulated by this Law. The Government also did not contest that an assembly held in a private café is not subject to any requirement of notification.

99. The Court further observes that the only reason provided by the Government for the police intervention, without relying on any domestic law provision, was the fact that neighbours had complained about the gathering. However, the Government failed to submit any evidence in support of their argument. Moreover, the Court finds that this argument is contradicted by the explanation concerning the police intervention of 14 June 2008 in which the Head of Nasimi District Police Station no. 22 stated that the police had intervened in order to identify the persons gathered and to establish the purpose of the gathering, without referring to any complaint from neighbours (see paragraph 26 above). The spokesman for the Ministry of Internal Affairs also indicated in his statement of 17 June 2008 that the police had intervened in order to interrupt an unauthorised gathering and to identify its participants, without referring to any complaint from neighbours (see paragraph 23 above).

100. The foregoing considerations are sufficient to enable the Court to conclude that the interference which constituted the dispersal of a peaceful gathering in a private property was not "prescribed by law" within the meaning of Article 11 § 2 of the Convention.

101. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 11 § 2 (legitimate aim and necessity of the interference) have been complied with.

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

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

103. 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

104. The applicant claimed 30,000 Azerbaijani manats (AZN) in compensation for non-pecuniary damage.

105. The Government submitted that the applicant's claim was unsubstantiated and excessive.

106. The Court considers that the applicant has suffered non-pecuniary damage which cannot be compensated for solely by the finding of a violation, and that compensation should thus be awarded. Making its assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant the sum of EUR 15,000 under this head, plus any tax that may be chargeable on this amount.

B. Costs and expenses

107. The applicant also claimed AZN 10,900 for costs and expenses incurred before the domestic courts and the Court. In particular, he claimed AZN 4,000 for costs and expenses incurred before the Court and AZN 6,900 for costs and expenses incurred before the domestic courts in the criminal and civil proceedings. In support of his claim, the applicant submitted a contract concluded between him and his lawyers.

108. The Government considered that the claim was unsubstantiated and excessive. In particular, the Government submitted that the applicant's complaints in the criminal and civil domestic proceedings were almost identical and the amount claimed by the applicant was not reasonable as to quantum. They further submitted that the amount claimed for costs and expenses incurred before the Court was also excessive.

109. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Having regard to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs under all heads.

C. Default interest

110. 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 COUR, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the lack of effective investigation of the applicant's allegations of ill-treatment;

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

5. *Holds* that there has been a violation of Article 11 of the Convention;

6. *Holds*,

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

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

Done in English, and notified in writing on7 May 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President