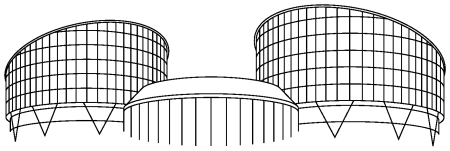

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF YUNUSOVA AND YUNUSOV v. AZERBAIJAN

(Application no. 59620/14)

JUDGMENT

STRASBOURG

2 June 2016

FINAL

17/10/2016

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

In the case of Yunusova and Yunusov v. Azerbaijan,

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

Angelika Nußberger, *President,*
Khanlar Hajiyev,
Erik Møse,
André Potocki,
Síofra O'Leary,
Carlo Ranzoni,
Mārtiņš Mits, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 26 April 2016,

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

PROCEDURE

1. The case originated in an application (no. 59620/14) 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, Ms Leyla Islam gizi Yunusova (*Leyla İslam qızı Yunusova* – "the first applicant") and Mr Arif Seyfulla oglu Yunusov (*Arif Seyfulla oğlu Yunusov* – "the second applicant"), on 29 August 2014.

2. The applicants were represented by Mr K. Bagirov, a lawyer practising in Azerbaijan. The first applicant was also represented by Mr J. Javadov and Ms D. Bychawska-Siniarska, lawyers practising in Azerbaijan and Poland, respectively. The Azerbaijani Government ("the Government") were represented by their Agent, Mr Ç. Asgarov.

3. The applicants alleged that they had not received adequate medical assistance while in detention and that their state of health had been incompatible with their conditions of detention. The first applicant also complained that she had been subjected to verbal and physical violence by a prison guard and one of her cellmates.

4. On 30 September 2014 the Acting President of the Section to which the case was allocated, acting upon the applicants' request of 18 September 2014, decided in the interests of the parties and the proper conduct of the proceedings before the Court to indicate to the Government, under Rule 39 of the Rules of Court, to provide both applicants with adequate medical treatment in prison and, if such treatment was unavailable in prison, to ensure the first applicant's immediate transfer to an appropriate medical facility for the duration of the proceedings before the Court. The Government were also requested to inform the Court, on a monthly basis, of

the applicants' state of health and medical treatment. In view of information provided by the Government on 19 November and 30 December 2015 concerning the applicants' release from detention, on 13 January 2016 the President of the Section decided to lift the interim measure previously indicated on 30 September 2014 under Rule 39 of the Rules of Court.

5. On 2 February 2015 the application was communicated to the Government. It was also decided to grant the application priority treatment under Rule 41 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1955 and live in Baku.

7. The first applicant is a well-known human rights defender and civil society activist. She is the director of the Institute for Peace and Democracy ("the Institute"), a non-governmental organisation specialising in human rights protection and conflict resolution.

8. The second applicant, the first applicant's husband, is a researcher and the head of the Conflict Resolution Department of the Institute.

A. Institution of criminal proceedings against the first applicant and her detention pending trial

9. On 30 July 2014 the first applicant was arrested by the police and was taken to the Serious Crimes Department ("the SCD") of the Prosecutor General's Office. On the same day she was charged under Articles 178.3.2 (large-scale fraud), 192.2.2 (illegal entrepreneurship), 213.2.2 (large-scale tax evasion), 274 (high treason), 320.1 and 320.2 (falsification of official documents) of the Criminal Code.

10. On 30 July 2014 the Nasimi District Court, relying on the official charges brought against the first applicant and the prosecutor's request for application of the preventive measure of remand in custody (*həbs qətimkan tədbiri*), ordered her detention pending trial for a period of three months. The court justified its application of the preventive measure by the gravity of the charges and the likelihood that if released, she might abscond from the investigation.

11. On 1 August 2014 the first applicant appealed against this decision, claiming that her detention was unlawful. She submitted, in particular, that there was no reasonable suspicion that she had committed a criminal offence, and that there was no justification for the application of the preventive measure of remand in custody. She pointed out in this

connection that her detention was related to her activities as a human rights defender and that she had been punished for her activities. She further complained that the court had failed to take into account her personal circumstances, such as her state of health and age, when it had ordered her detention pending trial.

12. On 6 August 2014 the Baku Court of Appeal dismissed the appeal, finding that the first-instance court's decision was lawful.

13. On 24 October 2014 the Nasimi District Court extended the first applicant's detention pending trial by four months, until 28 February 2015. The court substantiated its decision by the fact that more time was needed to complete the investigation and that the grounds for the detention had not changed.

14. On the same day the Nasimi District Court also dismissed the first applicant's request to be released on bail or placed under house arrest instead of in pre-trial detention.

15. On 27 October 2014 she appealed against these decisions, reiterating her previous complaints.

16. On 30 October 2014 the Baku Court of Appeal, in two separate decisions, upheld the Nasimi District Court's decisions of 24 October 2014.

17. No further extension decisions were included in the case file.

B. Institution of criminal proceedings against the second applicant and his detention pending trial

18. On 30 July 2014 the second applicant was questioned by an investigator at the SCD. Following the interrogation, he was charged under Articles 178.3.2 (large-scale fraud) and 274 (high treason) of the Criminal Code.

19. On the same day the investigator decided to apply the preventive measure of placement under police supervision (*polisin nəzarəti altına vermə qətimkan tədbiri*), taking into account his state of health, in particular the fact that he suffered from chronic hypertension. The relevant part of the decision reads as follows:

> "Taking into consideration the state of health of the accused, Arif Yunusov, who was diagnosed with grade 3 hypertension and hypertensive crisis, and given medical treatment in the Central Oil Workers' Hospital and Baku City Clinical Hospital No. 1 ... it was appropriate to choose the preventive measure of placement under police supervision."

20. It appears from the documents submitted by the Government that on 30 July 2014 the second applicant was examined by two experts, who issued forensic medical report no. 185/KES dated 31 July 2014. The report confirmed that the second applicant suffered from chronic hypertension. The report also indicated that "considering A. Yunusov's current state of health, it is possible to carry out investigative actions with him"

("*A. Yunusovun hal-hazırkı sağlamlıq durumu ilə əlaqədar onunla istintaq hərəkətlərinin aparılması mümkündür*").

21. On 5 August 2014 the second applicant was arrested by the police. On the same day the prosecutor lodged a request with the Nasimi District Court asking it to replace the second applicant's placement under police supervision with detention pending trial. The prosecutor justified his request by the second applicant's failure to comply with the requirements of the preventive measure of placement under police supervision. The request also indicated that forensic medical report no. 185/KES dated 31 July 2014 did not reveal anything that would prevent the second applicant from participating in the investigation.

22. On 5 August 2014 the Nasimi District Court ordered the second applicant's detention pending trial for a period of three months. The court justified the detention by the gravity of the charges and the likelihood that if released he might abscond from the investigation.

23. On 8 August 2014 the second applicant appealed against this decision. He submitted, in particular, that there was no reasonable suspicion that he had committed a criminal offence and that there was no justification for replacing the preventive measure of placement under police supervision with detention pending trial. He also pointed out that his detention was related to his and his wife's activities as a civil society activist and human rights defender and that the court had failed to take into account his personal circumstances, such as his state of health and age, when it had ordered his detention pending trial.

24. On 11 August 2014 the Baku Court of Appeal dismissed the appeal, finding that the detention order was justified.

25. On 29 October 2014 the Nasimi District Court extended the second applicant's detention pending trial by four months, until 5 March 2015. The court substantiated its decision by the fact that more time was needed to complete the investigation and that the grounds for the detention had not changed.

26. On 30 October 2014 the Nasimi District Court also dismissed the second applicant's request to be released on bail or placed under house arrest instead of in pre-trial detention.

27. On 3 November 2014 the second applicant appealed against these decisions, reiterating his previous complaints and arguing that the first-instance court had failed to justify his continued detention.

28. On 6 November 2014 the Baku Court of Appeal, in two separate decisions, upheld the Nasimi District Court's decisions of 29 and 30 October 2014.

29. No further extension decisions were included in the case file.

C. The applicants' state of health before their arrest

30. The medical documentation submitted by the parties shows that the first applicant suffers from a number of illnesses. In particular, she has suffered from chronic hepatitis (hepatitis C) since 1997. People with hepatitis C usually suffer from constant exhaustion, joint, muscle and abdominal pain, general sickness and weakness, and often depression. A low-fat diet is required to reduce liver damage. The disease is potentially fatal. The first applicant regularly underwent medical treatment in Germany before her arrest.

31. Since 2009 she has also had type 2 diabetes, which is non-insulin dependent and requires sufferers to follow a special diabetic diet and take regular exercise. In addition, she suffers from myogelosis (muscle stiffness), arterial hypertension and a single cyst in the left kidney.

32. It also appears from the medical documents in the case file that she underwent surgery on both eyes in Germany before her arrest and needs specialist medical care as a follow-up, to avoid any risk of damage to her eyesight. The relevant part of a letter dated 5 September 2014 from the head of the Department of Ophthalmology at the Asklepios Clinic in Hamburg reads as follows:

> "Mrs Yunusova's right and left eyes were both myopic with cataracts.
>
> It is absolutely necessary that she undergoes a repeat consultation and examination for the development of capsular fibrosis, which can lead to visual impairment and needs surgical laser treatment.
>
> It is also absolutely necessary that she undergoes a complete bilateral examination of her retina since she has had myopia and her risk of retinal detachment is substantially higher than in normal eyes and is further increased by the previous surgery. Any signs of retinal tears must be treated early with a laser retinopexy to prevent further damage and minimise the risk of permanent visual impairment."

33. The medical documentation submitted by the parties shows that the second applicant suffers from grade 3 chronic hypertension and hypertensive crisis, with an increased risk of cardiovascular complications. He regularly underwent medical treatment in Germany before his arrest. He was also hospitalised from 25 to 28 April 2014 in the Central Oil Workers' Hospital and from 29 April to 6 May 2014 in Baku City Clinical Hospital No. 1.

D. The applicants' conditions of detention and medical care

1. The first applicant's conditions of detention and medical care

(a) The first applicant's account

34. The first applicant was detained in a cell with four other detainees, two of whom were extremely noisy. Heating was available but inadequate.

The electricity was cut off from 2 to 3 p.m. and from 1 to 8 a.m., which made it impossible to use a heater. The temperature inside the cell and in the walking area was very low in winter. There was no proper ventilation inside the cell and the temperature was very high in summer. There was a problem with hot water distribution in the cell. In particular, she was not informed of the distribution time for the hot water and could not obtain more when necessary. Moreover, there was only one refrigerator for all the detainees on her floor which was not sufficient.

35. According to the first applicant, upon her arrival at the detention facility, she was examined by a doctor who confirmed that she had type 2 diabetes and chronic hepatitis C.

36. From 31 July to 5 August 2014 she was provided with the necessary diabetic food and medicine by the second applicant who, as a close family member, was entitled to deliver her parcels. However, following his arrest on 5 August 2014, she was deprived of the necessary diabetic food and medicine. In particular, the detention facility administration did not allow her lawyer or friends to deliver her parcels until 23 August 2014, arguing that only the family members of a detainee could send in parcels.

37. In this connection, it appears from the documents submitted by the first applicant that on 6 August 2014 her lawyer asked the investigator in charge of the case to allow her friends, A.I. and S.A., to deliver her a parcel. He pointed out that, taking into consideration that on 5 August 2014 her husband had been arrested and that her only daughter lived abroad, the first applicant did not have any other family member to do this. On 22 August 2014 the lawyer also lodged a request with the administration of the detention facility ("the administration"), complaining that on 21 August 2014 employees had refused to receive a parcel for the first applicant on the grounds that it had not been sent in by a family member.

38. On 22 August 2014 the first applicant lodged a request with the administration and the investigator in charge of the case, asking for a medical examination at her own expense by a doctor of her own choosing, A.G. She specified in her request that she suffered from diabetes and other serious illnesses, and that under domestic law detainees could be examined by a doctor of their own choosing.

39. By a letter of 4 September 2014, the deputy governor of the detention facility replied to her request, noting that there was no need for a medical examination by A.G. In this connection, he pointed out that the first applicant's state of health was stable and being monitored by the detention facility doctors. The letter also indicated that on 19 August 2014 she had been examined by an endocrinologist from the Ministry of Health, who had recommended that she continue her previous treatment.

40. By a decision of 9 September 2014, the investigator dismissed her request, finding that all the necessary measures had been taken for her medical treatment in the detention facility.

41. On 23 September 2014 the first applicant's cell was searched. On the same day she was deprived of her right to make phone calls for one month. She was also obliged to take a cold shower because the shower room had no hot water.

42. On 26 September 2014 the first applicant's lawyer asked the administration to provide him with a copy of the administrative decision depriving the first applicant of her right to make phone calls. He did not receive any response to his request.

43. On 14 October 2014 the first applicant's lawyer asked the administration to provide him with a list of medication prescribed to the first applicant during her detention. He did not receive any response to his request.

44. By a letter of 21 October 2014 the deputy governor of the detention facility responded to the first applicant's complaint of being unable to receive parcels following her husband's arrest. He noted that she had received a parcel sent in by A.I. on 23 August 2014. The letter was however silent as to the delivery of any parcels between 5 and 23 August 2014.

45. In a statement dated 4 May 2015 submitted by the first applicant to the Court with the applicants' reply to the Government's observations, she stated that she had not been provided with any documents concerning her state of health. As regards her medical treatment in detention, she stated that she had been examined on 29 December 2014 and 12 March 2015 at the Baku Diagnostic Centre by C.W., a German doctor from Charité, a university hospital in Berlin. During the examination on 29 December 2014, she had been insulted and humiliated by a doctor named R.A when C.W. had been out of the room. In March 2015 the eyesight in her left eye had drastically deteriorated. The ophthalmologist who had examined her on 31 March 2015 stated that the same process would soon begin to happen to her right eye. She further stated that in detention her weight had dropped dramatically because of her illnesses and conditions of detention.

(b) The Government's account

46. On 31 July 2014 the first applicant was admitted to the Baku Pre-trial Detention Facility of the Ministry of Justice.

47. She was held with four other detainees in a cell measuring 26.32 sq. m designed to hold six detainees. The cell was adequately lit. It had two windows measuring 1.2 x 1.4 metres. The sanitary facilities were separate from the rest of the cell and were adequately ventilated. She was provided with food, water, bedding, clothing and other essentials.

48. Upon her arrival at the detention facility on 31 July 2014, she underwent a series of medical examinations. Fluorography and electrocardiography examinations did not reveal any changes to her pathological condition. Her neuropsychological status was evaluated as satisfactory. An ultrasound examination of her abdomen and external

examination of her body confirmed that she had previously undergone surgery. General and biochemical blood tests concluded that her blood sugar level was a little higher than average. Following these examinations, she was diagnosed with chronic hepatitis C, type 2 diabetes, gallstones, a single cyst in the left kidney (measuring 0.91 cm) and pseudophakia (replacement of the natural lenses of the eyes with intraocular lenses). The Government provided the Court with copies of the results of the medical tests and examinations carried out that day.

49. It further appears from the extracts of the first applicant's detention facility medical records (*məhkumun tibbi kitabçası*) submitted by the Government that on 31 July 2014 the doctor recommended that the first applicant continue the medical treatment for diabetes prescribed by her previous doctor, the drug Galvus. She also had the rules of a diabetic diet explained to her and was provided with a blood glucose meter to monitor the level of sugar in her blood.

50. On 2 August 2014 the first applicant was provided with medication brought in by her relatives, including 20 Galvus Met capsules, 90 Glifer capsules, 308 Galvus tablets, 30 Beloc tablets and 17 Spasmalgon tablets. The next delivery of medication, comprising 20 Spasmalgon tablets, took place on 29 August 2014. The first applicant's need for medication during this period was fully covered by the medication delivered on 2 August 2014. As to the provision of diabetic food from 5 to 23 August 2014, upon her arrival at the detention facility, the first applicant was registered on a list of diabetic detainees and was consequently provided with diabetic food during this period.

51. On 19 August 2014 she was examined by an endocrinologist in the detention facility, who recommended that she continue her previous treatment. On the same day she also underwent a blood test to determine her sugar level and the state of the hepatitis C. The Government provided the Court with copies of the results of the medical tests and examinations conducted that day.

52. On 23 September 2014 she was examined by a detention facility doctor. She complained of general sickness without raising any particular complaints.

53. On 8 and 10 October 2014 she was examined by a neurologist and a therapist. No pathological conditions were revealed.

54. On 19 November 2014 the first applicant refused to be examined by an ophthalmologist at the National Ophthalmology Centre in order to establish the impact of the diabetes on her eyesight. According to the Government, on 25 and 26 November and 2 and 3 December 2014 she again refused to be examined by the detention facility doctors. They submitted various records compiled by the doctors to support this claim.

55. On 11 December 2014 she was examined by an endocrinologist who assessed her state of health as stable. The Government did not submit any documents concerning this medical examination.

56. On the same day she refused to undergo various medical examinations by a virologist, endocrinologist and physician from the Ministry of Health in the presence of the members of the joint working group on human rights and members of the public committee under the Ministry of Justice. However, she refused to sign anything to say that she had refused to be examined.

57. On 12 December 2014 the first applicant's lawyer lodged a request with the prosecution authorities, complaining of the deterioration of her state of health in detention and asking for a forensic medical examination. The lawyer submitted that her hepatitis C and diabetes were serious and that since her detention her weight had dropped dramatically from 61 to 47 or 48 kg. The lawyer also pointed out that, as the first applicant had not been provided with adequate medical care in detention, she refused to be examined by the detention facility doctors.

58. On the same day the investigator in charge of the case ordered a forensic medical examination of the first applicant. The experts could only examine her on 8 January 2015 in the presence of her lawyer due to her initial refusal. They issued forensic medical report no. 424/KES, which indicated that the examination had begun on 18 December 2014 and ended on 28 January 2015. The report confirmed that the first applicant suffered from a number of illnesses, including hepatitis C and diabetes. However, the experts concluded that the illnesses were not life-threatening and could be treated in detention. The relevant part of the conclusion of the report reads as follows:

> "4. The illnesses revealed in L.Yunusova, being chronic in nature, do not pose any danger to her life and she does not currently need immediate and specialist treatment.
>
> 5. If necessary, L. Yunusova can receive outpatient treatment in her conditions of detention in respect of the hepatitis C and diabetes which were diagnosed.
>
> 6. L. Yunusova's current state of health allows her to remain in detention and does not pose any danger to her life."

59. In the meantime, on 29 December 2014 the first applicant underwent a number of medical tests and examinations in the presence of C.W from Charité. In particular, she underwent a general and biochemical blood test, an ultrasound examination of the abdominal cavity, a chest computed tomography (CT) scan, and electrocardiography and echocardiography examinations. The Government submitted copies of the results of these medical tests and examinations to the Court with their observations. However, none of the documents submitted contained any information regarding medical recommendations or prescriptions made by the doctors following the examinations dated 29 December 2014.

60. On 26 January 2015 the first applicant again underwent various medical tests and examinations. She was examined by a group of doctors, including international doctors C.W., L.U. (a professor from the Budapest Metropolitan Cancer Centre) and A.B. (a gynaecologist). The Government submitted copies of the results of these medical tests and examinations to the Court with their observations. However, none of the documents submitted contained any medical recommendations or prescriptions concerning the first applicant's medical treatment.

61. On 12 March 2015 she was examined in the presence of C.W. and Z.R. (the director of ExaMed Medical Centre in Budapest). On the same day, she underwent a blood test and gynaecological ultrasound examination. The Government submitted copies of the results of these medical tests and examinations to the Court with their observations. However, none of the documents submitted contained any medical recommendations or prescriptions concerning the first applicant's medical treatment.

62. The extracts of the first applicant's detention facility medical records contained further information concerning her state of health from 31 July 2014 to 12 March 2015:

- On 19 and 20 September 2014 she was provided with the relevant medication brought in by her lawyer and friends.
- On 22 September 2014 she complained of constant exhaustion, general sickness and weakness.
- On 23 September 2014 she again complained of general sickness and stayed in bed. That day and the next she was examined by a prison doctor who assessed her state of health as satisfactory. In particular, it was established that her blood pressure, temperature and sugar level were within the permitted range.
- On 30 September 2014 she was provided with medication for diabetes brought in by her friends.
- On 3 October 2014 she underwent a prophylactic medical examination and was provided with medication brought in by her friends.
- On 8 and 10 October 2014 she was examined by a neurologist and a therapist. During the examination, she complained only of frequent urination.
- On 17 October 2014 she underwent a prophylactic medical examination and was provided with medication brought in by her friends.
- On 25, 28 and 31 October 2014 she was provided with medication brought in by her friends.
- On 15, 21, 25 and 26 November she refused to be examined.
- On 12 December 2014 she was provided with medication brought in by her friends.
- On 3, 13 and 16 December 2014 she refused to be examined.
- On 19 December 2014 she complained of a migraine and stress, but refused to be examined by a doctor.

- On 23 December 2014 she was provided with medication brought in by her friends.
- On 29 December 2014 she was examined in compliance with international standards by a group of doctors, including an international doctor.
- On 6, 7 and 10 January 2015 she did not complain about her state of health.

(Illegible)

- On 23 January 2015 she complained of headaches, but refused to be examined by a doctor.
- On 26 January 2015 she was again examined by a group of international doctors.
- (date illegible) January 2015 she again refused to be examined by a doctor and was provided with medication brought in by her friends.
- On 6 and 17 February 2015 she again refused to be examined.
- On 19 February 2015 she complained of headaches.
- On 12 March 2015 she was again examined by a group of doctors, including international doctors.

2. The second applicant's conditions of detention and medical care

(a) The second applicant's account

63. The second applicant was detained alone in a cell at the Pre-trial Detention Facility of the Ministry of National Security.

64. According to his lawyer, his state of health significantly deteriorated after his arrest. In particular, the domestic authorities had failed to provide him with adequate medical care in detention. He further submitted that in the absence of any information concerning the second applicant's conditions of detention and medical care, it was impossible for him to give an account about either.

(b) The Government's account

65. On 6 August 2014 the second applicant was admitted to the Pre-trial Detention Facility of the Ministry of National Security.

66. He was held in a cell measuring 8 sq. m designed to hold two inmates. He was placed alone in the cell at his own request. The cell had two beds and was adequately lit and ventilated. He was provided with hot and cold water, bedding, clothing and other essentials.

67. According to a letter by the governor of the detention facility dated 13 March 2015, heating was available and functioned well. The sanitary conditions were acceptable and the food served was of good quality. The second applicant also had the right to listen to the radio for five hours a day and to use the detention facility library. He was also entitled to receive one food parcel a week (weighing up to 31.5 kg) from his relatives.

68. Upon his arrival at the detention facility, the second applicant underwent a medical examination, during which he stated that he had suffered from arterial hypertension since 2006. However, he did not make any particular complaint about his state of health which was assessed as satisfactory.

69. On 7 August 2014 the second applicant underwent an electrocardiography examination which did not reveal any problems.

70. It further appears from a medical certificate dated 29 September 2014 from the head of the medical service of the detention facility that the second applicant's state of health was satisfactory and that he had not sought medical attention during his pre-trial detention.

E. The first applicant's alleged ill-treatment in prison by prison guard and her cellmate

1. The first applicant's account of events

71. On 7 August 2014 a repeat offender, N.H., was transferred to the applicant's cell. After being transferred, N.H. frequently subjected the first applicant to verbal and physical violence. She complained to the administration, but no action was taken.

72. On 19 September 2014 she lodged a request with the administration, complaining about N.H.'s unlawful behaviour. In particular, she complained that she had been subjected to physical violence and that the placement of a repeat offender in her cell was not in compliance with domestic law.

73. On 23 September 2014 the first applicant was subjected to verbal and physical violence by Major Y., a prison guard.

74. By a letter of 21 October 2014, the governor of the detention facility responded to the first applicant's request of 19 September 2014. He claimed that she had not been subjected to violence by N.H. and that her conditions of detention complied with the established standards.

2. The Government's account of events

75. Following publication in the media of information concerning the first applicant's alleged beating in the detention facility, on 25 September 2014 an investigator from the Sabunchu District Prosecutor's Office ordered a forensic medical examination. He asked experts to establish whether there were any signs of ill-treatment on the first applicant's body.

76. Following examinations on 29 September and 10 October 2014, the experts issued forensic medical report no. 285 dated 13 October 2014. They concluded that there were no signs of injury on the first applicant's body.

77. On 22 October 2014 the investigator in charge of the case refused to institute criminal proceedings, finding that there was no evidence that the first applicant had been subjected to violence in the detention facility. The

decision relied on the conclusions of the forensic medical report of 13 October 2014, statements by the first applicant's cellmates and video footage from the detention facility.

78. No appeal was lodged against this decision.

F. The Government's monthly reports on the applicants' state of health

79. Following the indication of the interim measure under Rule 39 of the Rules of Court by the Acting President of the Section on 30 September 2014, the Government responded by a letter dated 3 November 2014 submitting that the relevant domestic authorities had been immediately informed of the interim measure indicated by the Court under Rule 39. They further submitted that the applicants' state of health was stable and did not require their transfer to an appropriate medical facility. The letter also contained an overview of the medical examinations that the applicants had undergone in October 2014, although no medical documents were attached to the letter.

80. The Government subsequently provided the Court with monthly information reports concerning the applicants' state of health and medical treatment in detention. All the monthly reports submitted were one or two pages long. They began in a standard format and said that "the applicants' state of health is stable and does not require [their] transfer to a specialist medical facility". They were not accompanied by any medical documents.

81. The reports sent by the Government from November 2014 to June 2015 contained the same information in respect of the first applicant's state of health and medical treatment as they submitted in their observations of 27 May 2015. As regards the second applicant's state of health and medical treatment, all the reports contained the two following sentences:

> "Over the past month, the second applicant's state of health was under constant medical supervision, and it was assessed as satisfactory; no deterioration in his health has been noted.
>
> (date), the second applicant passed [his] latest general medical examination, which did not reveal any deterioration in his health."

82. As regards the subsequent reports, the two-page report dated 30 July 2015 indicated that on 13 July 2015 the first applicant had been examined by C.W. in the presence of local doctors. The results of the examination showed that her state of health was stable and did not reveal any pathological conditions or signs of deterioration. C.W. recommended that the first applicant take Harvoni and she started treatment with this drug on 14 July 2015. As regards the second applicant, the report contained the above-mentioned two sentences. No medical documents were attached to the information report.

83. The two-page report dated 7 September 2015 indicated that on 14 August 2015 the first applicant had again been examined by C.W. in the presence of local doctors. The results of the examination showed that her state of health was stable and did not reveal any pathological conditions or signs of deterioration. C.W. prescribed the drug Velmetia for the regulation of her blood sugar level. As regards the second applicant, in addition to the above-mentioned two sentences, the report indicated that on 3 August 2015 at a court hearing, the second applicant had asked for medical help. His blood pressure had been 210/110 mm Hg and could be stabilised following the intervention of the emergency services. The hearing had been postponed upon a doctor's advice. No medical documents were attached to the information report.

84. The one-page report dated 6 October 2015 indicated that the first applicant had finished her medical treatment with Harvoni. The report also contained information relating to her blood pressure and sugar level. As regards the second applicant, the report contained the above-mentioned two sentences. No medical documents were attached.

85. The reports dated 19 November and 2 December 2015 contained information relating to the first applicant's blood pressure and sugar level and indicated that on 3 and 7 October 2015 the first applicant had refused to be examined by the doctors. On 30 October 2015 she had been examined by C.W, at whose request she had been transferred to the medical department of the Prison Service. As regards the second applicant, he had been examined by C.W on 30 October 2015. His blood pressure had been 224/122 mm Hg and he had been prescribed with the relevant medical treatment. On 2 November 2015 he had been transferred to the medical department of the Prison Service, where he had received the necessary medical treatment. Following this treatment, his blood pressure had lowered to 160/110 mm Hg. No medical documents were attached to the information report.

G. The applicants' criminal conviction and subsequent release from detention

86. On an unspecified date the criminal investigation was completed and the applicants' case was referred to the Baku Assize Court for trial.

87. On 13 August 2015 it convicted and sentenced the applicants to eight and a half and seven years' imprisonment respectively.

88. On an unspecified date the applicants appealed against this judgment to the Baku Court of Appeal.

89. It appears from the information submitted by the Government that on an unspecified date the medical department of the Prison Service requested the Baku Court of Appeal to change the second applicant's detention pending trial due to his emotional state and the possible repeat of

hypertensive crisis. The Government did not provide the Court with a copy of this request.

90. On 12 November 2015 the Baku Court of Appeal granted the request and ordered the second applicant's release. The Court was not provided with a copy of this decision.

91. On 9 December 2015 the Baku Court of Appeal quashed the Baku Assize Court's judgment of 13 August 2015 and gave the applicants a conditional sentence of five years' imprisonment. The first applicant was released from the court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Republic of Azerbaijan

92. 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. ..."

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

93. In accordance with Article 37 of the CCrP, criminal proceedings are instituted on the basis of a complaint by the victim of a criminal offence. Chapter LII of the CCrP lays down the procedure by which parties to criminal proceedings may challenge the actions or decisions of the prosecution authorities before a court. Article 449 provides that a victim or his counsel may challenge such actions or decisions as, *inter alia*, the prosecution authorities' refusal to institute criminal proceedings or to terminate them. The judge examining the lawfulness of the prosecution authorities' actions or decisions may quash them if he or she finds them to be unlawful (Article 451). This decision is amenable to appeal in accordance with the procedure established in Articles 452 and 453 of the CCrP.

C. Internal Disciplinary Rules of Pre-trial Detention Facilities adopted by Decision No. 63 of 26 February 2014 of the Cabinet of Ministers

94. Section 9 provides that detainees are entitled to receive one parcel a week. Detainees suffering from serious illness (if there is a medical report) are entitled to receive an unlimited number of parcels. Section 9.3 requires the person who provides a detainee with a parcel to identify him or herself, without requiring him or her to show any family or other link between them.

D. List of Serious Illnesses Precluding the Detention of Prisoners adopted by the Ministry of Health on 26 October 2010

95. Section 6.2 indicates that grade 3 hypertension is among the serious illnesses precluding the detention of prisoners if it leads to one of the three following situations: recurrent transmural myocardial infarction (6.2.1), third-stage circulatory inefficiency (6.2.2) or end-stage kidney failure (6.2.3).

E. Code of Administrative Procedure ("the CAP") and the domestic remedy invoked by the Government

96. The CAP, adopted on 30 December 2009, entered into force on 1 January 2011. Article 2 sets out the procedural rules relating to administrative law disputes, including those concerning the acts, actions or inactions of administrative organs affecting individuals' rights and liberties. Following the entry into force of the CAP, on 10 June 2011 Chapter XXVI of the Code of Civil Procedure establishing the procedural rules relating to disputes between individuals and administrative organs was deleted.

97. Under the CAP, an action may be lodged to dispute the lawfulness of an administrative act (Article 32), to request the court to require an administrative organ to adopt an administrative act (Article 33), or to request the court to require an administrative organ to take action other than the adoption of an administrative act or refrain from taking certain action (Article 34).

98. Chapter VII establishes the rules relating to the application of temporary defence measure (*müvəqqəti xarakterli müdafiə tədbiri*). In particular, under Article 40, an interested party may request a court to apply a temporary defence measure. Requests may be submitted before lodging a complaint with the court or in the course of the administrative proceedings (Article 40.1). The court may grant an injunction requiring the respondent party to take or refrain from certain action, or to tolerate certain action (Article 40.3). If the interested party lodges an administrative complaint with an administrative organ, the request for application of a temporary defence measure must be lodged with the same administrative organ. If the latter does not grant the request within fifteen days, the interested party may complain to a court under the procedure established in Articles 40.1 and 40.2 (Article 40.4). The CAP does not, however, provide any specific time-limit for the examination of a request for application of a temporary defence measure by the domestic courts.

99. The Government provided a copy of a decision of Baku Administrative Economic Court No. 1 dated 24 July 2012 (*A.I. v. the Prison Service of the Ministry of Justice*), submitting that the decision in question constituted an example of the effectiveness of one of several available

domestic remedies. In that case, a first-instance court, in the course of the administrative proceedings, decided to apply a temporary defence measure ordering the Prison Service to transfer a detainee to a medical facility for ten days to undergo surgery. The Government did not provide any further information about the final outcome of those proceedings.

III. RELEVANT INTERNATIONAL REPORTS AND DOCUMENTS

A. Extracts from the 3rd General Report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) covering the period 1 January to 31 December 1992

100. The requirements concerning the organisation of health care services in detention facilities were described by the CPT in its 3rd General Report (CPT/Inf (93) 12 - Publication Date: 4 June 1993). The relevant part of the Report reads as follows:

> "**a. Access to a doctor**
>
> 33. When entering prison, all prisoners should without delay be seen by a member of the establishment's health care service. In its reports to date the CPT has recommended that every newly arrived prisoner be properly interviewed and, if necessary, physically examined by a medical doctor as soon as possible after his admission. It should be added that in some countries, medical screening on arrival is carried out by a fully qualified nurse, who reports to a doctor. This latter approach could be considered as a more efficient use of available resources.
>
> It is also desirable that a leaflet or booklet be handed to prisoners on their arrival, informing them of the existence and operation of the health care service and reminding them of basic measures of hygiene.
>
> 34. While in custody, prisoners should be able to have access to a doctor at any time, irrespective of their detention regime ... The health care service should be so organised as to enable requests to consult a doctor to be met without undue delay.
>
> ...
>
> 35. A prison's health care service should at least be able to provide regular out-patient consultations and emergency treatment (of course, in addition there may often be a hospital-type unit with beds) ... Further, prison doctors should be able to call upon the services of specialists.
>
> As regards emergency treatment, a doctor should always be on call. Further, someone competent to provide first aid should always be present on prison premises, preferably someone with a recognised nursing qualification.
>
> Out-patient treatment should be supervised, as appropriate, by health care staff; in many cases it is not sufficient for the provision of follow-up care to depend upon the initiative being taken by the prisoner.
>
> 36. The direct support of a fully-equipped hospital service should be available, in either a civil or prison hospital.

...

b. Equivalence of care

i) general medicine

38. A prison health care service should be able to provide medical treatment and nursing care, as well as appropriate diets, physiotherapy, rehabilitation or any other necessary special facility, in conditions comparable to those enjoyed by patients in the outside community. Provision in terms of medical, nursing and technical staff, as well as premises, installations and equipment, should be geared accordingly.

There should be appropriate supervision of the pharmacy and of the distribution of medicines. Further, the preparation of medicines should always be entrusted to qualified staff (pharmacist/nurse, etc.).

39. A medical file should be compiled for each patient, containing diagnostic information as well as an ongoing record of the patient's evolution and of any special examinations he has undergone. In the event of a transfer, the file should be forwarded to the doctors in the receiving establishment.

Further, daily registers should be kept by health care teams, in which particular incidents relating to the patients should be mentioned. Such registers are useful in that they provide an overall view of the health care situation in the prison, at the same time as highlighting specific problems which may arise.

40. The smooth operation of a health care service presupposes that doctors and nursing staff are able to meet regularly and to form a working team under the authority of a senior doctor in charge of the service.

...

c. Patient's consent and confidentiality

45. Freedom of consent and respect for confidentiality are fundamental rights of the individual. They are also essential to the atmosphere of trust which is a necessary part of the doctor/patient relationship, especially in prisons, where a prisoner cannot freely choose his own doctor.

i) patient's consent

46. Patients should be provided with all relevant information (if necessary in the form of a medical report) concerning their condition, the course of their treatment and the medication prescribed for them. Preferably, patients should have the right to consult the contents of their prison medical files, unless this is inadvisable from a therapeutic standpoint.

They should be able to ask for this information to be communicated to their families and lawyers or to an outside doctor.

47. Every patient capable of discernment is free to refuse treatment or any other medical intervention. Any derogation from this fundamental principle should be based upon law and only relate to clearly and strictly defined exceptional circumstances which are applicable to the population as a whole.

...

ii) confidentiality

50. Medical secrecy should be observed in prisons in the same way as in the community. Keeping patients' files should be the doctor's responsibility.

51. All medical examinations of prisoners (whether on arrival or at a later stage) should be conducted out of the hearing and - unless the doctor concerned requests otherwise - out of the sight of prison officers. Further, prisoners should be examined on an individual basis, not in groups. ..."

B. Extracts from Recommendation (Rec(2006)2) of the Committee of Ministers to Member States on the European Prison Rules, adopted on 11 January 2006 ("the European Prison Rules")

101. The European Prison Rules provide a framework of guiding principles for health services. The relevant extracts from the Rules read as follows:

"**Part I**

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

...

Scope and Application

10.1. The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

...

Part III

Health

Health care

39. Prison authorities shall safeguard the health of all prisoners in their care.

Organisation of prison health care

40.1 Medical services in prison shall be organised in close relation with the general health administration of the community or nation.

40.2 Health policy in prisons shall be integrated into, and compatible with, national health policy.

40.3 Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

40.4 Medical services in prison shall seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer.

40.5 All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner for that purpose.

Medical and health care personnel

41.1 Every prison shall have the services of at least one qualified general medical practitioner.

41.2 Arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency.

...

41.4 Every prison shall have personnel suitably trained in health care.

...

Duties of the medical practitioner

42.1 The medical practitioner or a qualified nurse reporting to such a medical practitioner shall see every prisoner as soon as possible after admission, and shall examine them unless this is obviously unnecessary.

...

42.3 When examining a prisoner the medical practitioner or a qualified nurse reporting to such a medical practitioner shall pay particular attention to:

a. observing the normal rules of medical confidentiality;

b. diagnosing physical or mental illness and taking all measures necessary for its treatment and for the continuation of existing medical treatment;

c. recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently;

...

43.1 The medical practitioner shall have the care of the physical and mental health of the prisoners and shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury and any prisoner to whom attention is specially directed.

...

Health care provision

46.1 Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals when such treatment is not available in prison.

46.2 Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide the prisoners referred to them with appropriate care and treatment."

C. Extracts from the UN Committee Against Torture's concluding observations on the fourth periodic report of Azerbaijan

102. In November 2015 the UN Committee Against Torture considered the fourth periodic report of Azerbaijan (CAT/C/AZE/4) and adopted, *inter*

alia, the following concluding observations at its 1382nd meeting (CAT/C/SR.1382) held on 26 November 2015:

> "**Arbitrary imprisonment and ill-treatment of human rights defenders**
>
> 10. The Committee is deeply concerned by consistent and numerous allegations that a number of human rights defenders have been arbitrarily deprived of their liberty, subjected to ill-treatment, and in some cases have been denied adequate medical treatment in retaliation for their professional activities, such as: Leyla and Arif Yunus ...
>
> 11. The State party should:
>
> (a) Investigate promptly, thoroughly and impartially all allegations of arbitrary arrest, denial of adequate medical treatment, and torture or ill treatment of human rights defenders, including those listed above, prosecute and punish appropriately those found guilty, and provide the victims with redress;
>
> (b) Release human rights defenders who are deprived of their liberty in retaliation for their human rights work;"

D. Joint Statement of the UN Special Rapporteurs and the Chair-Rapporteur of the UN Working Group on Arbitrary Detention dated 20 August 2015

103. On 20 August 2015 the UN Special Rapporteurs on the situation of human rights defenders, on the rights to freedom of peaceful assembly and of association, on freedom of opinion and expression, on the independence of judges and lawyers and on the right to health made a joint statement with the Chair-Rapporteur of the UN Working Group on Arbitrary Detention condemning the applicants' criminal conviction. They expressed concern about the serious deterioration of the applicants' health during their extended period of pre-trial detention and called "on the Azerbaijani authorities to immediately provide them with adequate medical care".

THE LAW

I. ARTICLE 34 OF THE CONVENTION

104. The applicants complained that the Government had failed to comply with the letter and spirit of the interim measure indicated by the Court under Rule 39 and had thus violated their right of individual application. They relied on Article 34 of the Convention, which reads as follows:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols

thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

Rule 39 of the Rules of Court provides:

"1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.

2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.

3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.

4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures."

A. The parties' submissions

105. The Government disputed the applicants' submissions, pointing out that they had complied with the interim measure indicated by the Court. In this connection, they maintained that they had submitted all the material and documents concerning the applicants' state of health.

106. They further submitted that, although all the monthly information reports concerning the applicants' state of health had been forwarded to the applicants by the Court, the applicants had failed to comment or to request any further information about them in this regard from the Government. In these circumstances, the applicants had been precluded from raising a complaint in their observations concerning the implementation of the interim measure.

107. The applicants argued that the Government had failed to comply with the interim measure indicated by the Court on 30 September 2014. In this connection, they noted that, although the interim measure had indicated to the Government to inform the Court, on a monthly basis, of the applicants' state of health and medical treatment, they had failed to provide any medical evidence in this respect. In particular, they pointed out that the Government had contented themselves with repeating in their very brief monthly reports sent to the Court that "the applicants' state of health was satisfactory and stable" or "the applicants' state of health was under constant medical supervision", without submitting any documents concerning the medical prescriptions or recommendations of the doctors who had examined them.

108. They further submitted that the Government's failure to provide the Court with medical evidence regarding their state of health had

fundamentally undermined the protective purpose of the interim measure in question. They noted in this connection that the Court had indicated to the Government to provide the first applicant with adequate medical treatment in prison and, if such treatment was unavailable in prison, to ensure her immediate transfer to an appropriate medical facility for the duration of the proceedings before the Court. However, the Government's failure to provide the Court with medical evidence regarding her medical treatment in prison had made it impossible for the Court to assess whether she had been provided with adequate medical treatment or whether such treatment had been unavailable in prison and that she should be transferred to an appropriate medical facility.

B. The Court's assessment

1. General principles

109. The Court reiterates that, pursuant to Article 34 of the Convention, Contracting States undertake to refrain from any act or omission that may hinder the effective exercise of the right of individual application, and this has been consistently reaffirmed as a cornerstone of the Convention system (see *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, § 102, ECHR 2005-I). Although the object of Article 34 is essentially that of protecting an individual against any arbitrary interference by the authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there are positive obligations inherent in Article 34 requiring the authorities to furnish all the necessary facilities to make possible the proper and effective examination of applications. Such an obligation will arise in situations where applicants are particularly vulnerable (see *Naydyon v. Ukraine*, no. 16474/03, § 63, 14 October 2010; *Savitskyy v. Ukraine*, no. 38773/05, § 156, 26 July 2012; and *Iulian Popescu v. Romania*, no. 24999/04, § 33, 4 June 2013).

110. According to the Court's established case-law, a respondent State's failure to comply with an interim measure entails a violation of the right of individual application. The Court cannot emphasise enough the special importance attached to interim measures in the Convention system. Their purpose is not only to enable an effective examination of the application to be carried out, but also to ensure that the protection afforded to the applicant by the Convention is effective. Such measures subsequently allow the Committee of Ministers to supervise the execution of the final judgment. Interim measures thus enable the State concerned to discharge its obligation to comply with the final judgment of the Court, which is legally binding by virtue of Article 46 of the Convention (see *Mamatkulov and Askarov*, cited

above, § 125; *Khloyev v. Russia*, no. 46404/13, § 60, 5 February 2015; and *Patranin v. Russia*, no. 12983/14, § 46, 23 July 2015).

111. The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, only in truly exceptional cases and on the basis of a rigorous examination of all the relevant circumstances. In most of these cases, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. The vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands that the utmost importance be attached to the question of the States Parties' compliance with the Court's indications in that regard (see *Amirov v. Russia*, no. 51857/13, § 67, 27 November 2014, and *Khloyev*, cited above, § 61).

112. A complaint under Article 34 of the Convention is of a procedural nature and therefore does not give rise to any issue of admissibility under the Convention (see *Ergi v. Turkey*, 28 July 1998, § 105, *Reports of Judgments and Decisions* 1998-IV, and *Cooke v. Austria*, no. 25878/94, § 46, 8 February 2000). Article 34 will be breached if the authorities of a Contracting State fail to take all the steps which could reasonably be taken in order to comply with an interim measure indicated by the Court (see *Paladi v. Moldova* [GC], no. 39806/05, § 88, 10 March 2009). It is for the respondent Government to demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see *Paladi*, cited above, § 92; *Gror v. Albania*, no. 25336/04, § 184, 7 July 2009; and *Patranin*, cited above, § 48).

2. Application to the present case

113. The Court notes that in the present case, on 30 September 2014 it decided to indicate to the Azerbaijani Government, under Rule 39 of the Rules of Court, in the interests of the parties and the proper conduct of the proceedings before the Court, to provide both applicants with adequate medical treatment in prison, and, if such treatment was unavailable in prison, to ensure that the first applicant was immediately transferred to an appropriate medical facility for the duration of the proceedings before the Court. The Court also requested the Government to inform it, on a monthly basis, of the applicants' state of health and medical treatment.

114. Following the indication of the interim measure, on 3 November 2014 the Government provided the Court with a letter containing an overview of the medical examinations that the applicants had undergone in October 2014. The letter indicated that the applicants' state of health was

stable and did not require their transfer to a specialist medical facility. No medical documents were attached.

115. Similar letters containing general information about the applicants' state of health and medical examinations in detention had been sent monthly by the Government to the Court from November 2014 to December 2015 (see paragraphs 79-85 above). However, none of them contained any medical documents concerning the medical treatment provided to the applicants in prison.

116. In this connection, the Court observes that the Government did not dispute their obligation under Article 34 of the Convention to comply with the interim measure indicated by the Court. Rather, they disputed the applicants' submissions and insisted that they had complied with the interim measure in its entirety by informing the Court, on a monthly basis, of the applicants' state of health and medical treatment and submitting all the material and documents in this respect.

117. However, the Court is not convinced by the Government's argument and notes at the outset that it cannot accept their submissions that all the material and documents concerning the applicants' state of health and medical treatment had been submitted to the Court. In particular, it observes that, although from November 2014 to December 2015 the Government sent monthly reports to the Court containing information about the applicants' state of health and medical treatment, none of them contained any medical documents in support of the information submitted. The only medical documents submitted by the Government following the indication of the interim measure were those submitted in their observations of 27 May 2015 concerning the results of the applicants' medical tests and examinations conducted between their arrest and 12 March 2015.

118. In this connection, the Court reiterates that whilst the formulation of an interim measure is one of the elements to be taken into account in the Court's analysis of whether a State has complied with its obligations under Article 34, the Court must have regard not only to the letter but also to the spirit of the interim measure indicated (see *Paladi*, § 91, and *Patranin*, § 52, both cited above) and, indeed, to its very purpose. The Court notes in this respect that the main purpose of the interim measure in the present case - and the Government did not claim to be unaware of this – was to prevent the applicants' exposure to inhuman and degrading suffering in view of their poor health and to ensure that they received adequate medical treatment in prison. In these circumstances, it was crucial for the Court to be provided information by the Government on a regular basis concerning the applicants' state of health supported by the relevant medical documents, without which the Court would not be able to assess the quality of the treatment the applicants received in prison and the adequacy of the conditions of their detention for their medical needs. In this connection, the Court agrees with the applicants' argument that the Government's failure to

provide the Court with medical evidence regarding their state of health had made it impossible for the Court to assess whether the first applicant was receiving adequate medical treatment, or, whether such treatment was unavailable in prison and that she should be transferred to an appropriate medical facility, as indicated by the interim measure of 30 September 2014.

119. The Court thus considers that the Government's failure to provide the Court with the relevant medical documents with their monthly information reports impaired the very purpose of the interim measure, preventing it from being able to establish whether the applicants were receiving adequate medical treatment in detention as required by the interim measure. Moreover, the Government did not explain their failure to comply with the interim measure nor did they demonstrate any objective impediment preventing compliance with it.

120. Consequently, the Court concludes that in the present case the State has failed to comply with the interim measure indicated under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION AS REGARDS THE APPLICANTS' MEDICAL TREATMENT IN DETENTION

121. The applicants complained that they had not been provided with adequate medical treatment in detention and that their state of health had been incompatible with their conditions of detention. 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

1. The parties' submissions

122. The Government submitted that the applicants had failed to exhaust domestic remedies, without specifying which remedies had been effective and available. In this connection, they submitted in a general manner that the applicants had failed to bring before the domestic authorities the complaints made subsequently to the Court.

123. The Government further relied on the case of *A.I. v. the Prison Service of the Ministry of Justice*, pointing out that the decision in question represented an example of the effectiveness of one of several available domestic remedies.

124. The applicants disagreed with the Government's submissions and reiterated their complaints. They noted that there had been no effective

domestic remedies in respect of their complaints relating to their medical treatment in detention and the compatibility of their state of health with their conditions of detention. In this connection, they submitted that the Government had failed to demonstrate that there had been an effective remedy available both in theory and in practice capable of providing redress in respect of their complaints and offering reasonable prospects of success.

2. The Court's assessment

125. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. The existence of the remedies must be sufficiently certain, in practice as well as in theory, failing which they will lack the requisite accessibility and effectiveness. Article 35 § 1 also requires that the complaints intended to be brought subsequently before the Court should be made first to the appropriate domestic body, at least in substance and in compliance with the formal requirements laid down in domestic law, although there is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV, and *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports* 1996-VI). Moreover, where the fundamental right to protection against torture, inhuman and degrading treatment is concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 98, 10 January 2012, and *Dirdizov v. Russia*, no. 41461/10, § 73, 27 November 2012).

126. As regards the distribution of the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available both in theory and in practice at the relevant time, that is to say that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. Once this burden of proof has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68, and *Muradova v. Azerbaijan*, no. 22684/05, § 84, 2 April 2009).

127. Turning to the circumstances of the present case, the Court observes at the outset that the Government merely noted that the applicants had not lodged any complaints concerning their medical treatment in detention. They neither specified what type of remedy would have been an effective remedy in their view, nor provided any further information as to

how such a remedy could have prevented the alleged violation or its continuation or provided the applicants with adequate redress (compare *Popov v. Russia*, no. 26853/04, § 205, 13 July 2006).

128. Inasmuch as the Government's contention that the case of *A.I. v. the Prison Service of the Ministry of Justice* constituted an example of the effectiveness of one of several available domestic remedies could be understood to mean that the applicants should have lodged a complaint against the Prison Service under the CAP in the domestic courts, the Court observes at the outset that under the CAP a complaint may be lodged with the domestic courts against any administrative act, action or inaction of an administrative organ violating individuals' rights and liberties. The Court further observes that, although Article 40 of the CAP allows a judge to grant an injunction as a temporary defence measure requiring the respondent party to take or refrain from taking some action, no specific time-limit was provided for the examination of a request for application of a temporary defence measure (see paragraph 98 above). In this connection, the Court considers that, even assuming that such a complaint constituted an effective remedy in theory, the Government failed to show the existence of settled national case-law that would prove the effectiveness of the remedy in question, particularly as regards complaints concerning medical treatment in detention.

129. The Court reiterates that, in order to be "effective", a remedy must be available not only in theory but also in practice. This means that the Government should normally be able to illustrate the practical effectiveness of the remedy with examples of domestic case-law (see *Dirdizov*, cited above, § 88). In the present case, the Government relied solely on the decision of Baku Administrative Economic Court No. 1 dated 24 July 2012, in which a temporary defence measure was ordered under Article 40 of the CAP to transfer a detainee from a penal facility to a medical facility to undergo surgery (see paragraph 99 above). However, the decision in question did not recognise the violation of the detainee's rights on account of a lack of medical treatment in prison or the incompatibility of his state of health with the conditions of detention. Nor did it provide the detainee with adequate redress for the violation. In any event, the Court reiterates that a single case cited by the Government is insufficient to show the existence of settled domestic practice that would prove the effectiveness of a remedy (see *Horvat v. Croatia*, no. 51585/99, § 44, ECHR 2001-VIII, and *Varga and Others v. Hungary*, nos. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, and 64586/13, § 53, 10 March 2015). It follows that the Court cannot but conclude, on the basis of the information before it, that a complaint under the CAP before the domestic courts could not be considered an effective remedy.

130. For the above reasons, the Court finds that the complaint cannot be rejected for non-exhaustion of domestic remedies. It considers 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

131. The Government claimed that the applicants had received comprehensive medical treatment in detention. They submitted that the applicants had been under constant medical supervision and that there had been no deterioration in their health. They referred in this connection to various medical examinations that the applicants had undergone during their detention. As to the first applicant, the Government relied on the results of examinations on 31 July, 19 August, 12 November and 29 December 2014, as well as on 26 January and 12 March 2015. They also submitted an undated note signed by C.W. indicating that her medical examinations had been conducted in his presence in accordance with the internationally accepted diagnostic rules and that he had been immediately informed of their results. The Government further referred to the first applicant's "bad faith" in refusing on many occasions to be seen by the doctors.

132. As to the second applicant, the Government submitted that he had undergone a monthly general medical examination, but these had not revealed any deterioration in his health. In this connection, they submitted the results of an undated blood test and a biochemical test, as well as three undated electrocardiographs.

133. The Government also submitted that the applicants' conditions of detention complied with international standards. In particular, the first applicant was held with four other detainees in a cell measuring 26.32 sq. m designed to hold six detainees. The cell was adequately lit and ventilated. She was provided with food, water, bedding, clothing and other essentials. As regards the second applicant, he was held alone in a cell measuring 8 sq. m designed to hold two inmates. The cell was adequately lit and ventilated. He was provided with hot and cold water, bedding, clothing and other essentials.

134. The applicants disagreed with the Government's submissions, arguing that they had not been provided with the requisite medical assistance in detention. In this connection, they complained that they had been unable to obtain effective medical care, which had led to a serious deterioration in their condition and subjected them to severe physical and mental suffering. They also complained that their conditions of detention had not been adapted to their state of health.

135. As regards the first applicant, the applicants noted that, although she had been examined on several occasions by C.W. within the framework

of the Government's cooperation with the European Parliament, the Government had failed to provide her or the Court with the medical recommendations or prescriptions made by C.W. following these examinations. Moreover, when on 21 February 2015 they had directly asked C.W., through their lawyers, for the documents in question, they could not obtain them. C.W. had indicated that confidentiality was a strict condition of his cooperation with the European Parliament and that, in the event of information being leaked out, he would be prevented from entering Azerbaijan for subsequent examinations of the first applicant. They also rejected the Government's reliance on the first applicant's "bad faith" in refusing to be seen by the doctors, noting that her refusal had been a protest against the lack of adequate medical treatment and her unlawful detention. As regards the adaptation of the first applicant's conditions of detention to her state of health, the applicants submitted that she had been deprived of diabetic food and medication from 5 to 23 August 2014. Moreover, although the Government submitted that she had been provided with special diabetic food, they had failed to specify what had actually been given to her. They also submitted that, even assuming that the cell in which she had been detained had measured more than 20 sq. m as submitted by the Government, its size could not be considered sufficient for a detainee such as her suffering from diabetes. In particular, she had not had enough space for physical activity despite the fact that one of the treatments for diabetes was taking exercise.

136. As regards the second applicant, the applicants submitted that his state of health had been incompatible with his detention. In particular, they noted that, although he had suffered from grade 3 chronic hypertension, which was an illness precluding detention in prison, he had been unlawfully detained. They further submitted that the Government had failed to submit any medical documents proving that the second applicant had been provided with adequate medical treatment in detention and had contented themselves with noting that he was "under constant medical supervision" and that his state of health "was assessed as satisfactory". They had also failed to submit any information as to whether his detention environment had been adapted to his state of health.

2. The Court's assessment

(a) General principles

137. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic societies. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's conduct (see, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). 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). Although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see *Peers*, cited above, § 74).

138. The State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła*, cited above, § 94, and *Popov*, cited above, § 208). In exceptional cases, where a detainee's state of health is absolutely incompatible with his or her detention, Article 3 may require the release of that person under certain conditions (see *Rozhkov v. Russia*, no. 64140/00, § 104, 19 July 2007). However, Article 3 cannot be construed as laying down a general obligation to release detainees on health grounds. It rather imposes an obligation on the State to protect the physical well-being of persons deprived of their liberty by, among other things, providing them with the requisite medical assistance (see *Sarban v. Moldova*, no. 3456/05, § 77, 4 October 2005, and *Khudobin v. Russia*, no. 59696/00, § 93, ECHR 2006-XII (extracts)). Medical treatment provided within prison facilities must be appropriate, that is, at a level comparable to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean that every detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (see *Blokhin v. Russia* [GC], no. 47152/06, § 137, 23 March 2016). A lack of appropriate medical care and, more generally, the detention in inappropriate conditions of a person who is ill, may in principle amount to treatment contrary to Article 3 (see, for example, *İlhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII, and *Helhal v. France*, no. 10401/12, § 48, 19 February 2015).

139. In cases in which there are conflicting accounts of events, the Court is inevitably confronted, when establishing the facts, with the same difficulties as those faced by any first-instance court. It reiterates that, in assessing evidence, it has adopted the standard of proof "beyond reasonable doubt". However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is to rule not on criminal guilt or civil liability but on Contracting States' responsibility

under the Convention. The specific nature of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention -conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts conclusions that are, in its view, supported by the free evaluation of all the evidence, including such inferences as may flow from the facts and the parties' submissions. In accordance with its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof, are intrinsically linked to the specific nature of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights (see *Creangă v. Romania* [GC], no. 29226/03, § 88, 23 February 2012, and the cases cited therein).

140. Furthermore, it should be pointed out that Convention proceedings do not in all cases lend themselves to a strict application of the principle *affirmanti incumbit probatio*. The Court reiterates its case-law under Articles 2 and 3 of the Convention to the effect that where the events at issue lie within the exclusive knowledge of the authorities, as in the case of persons under their control in custody, strong presumptions of fact will arise in respect of injuries, damage and death occurring during that detention. The burden of proof in such a case may be regarded as resting on the authorities to provide a satisfactory and convincing explanation (see *Çakıcı v. Turkey* [GC], no. 23657/94, § 85, ECHR 1999-IV; *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; and *Oleg Nikitin v. Russia*, no. 36410/02, § 45, 9 October 2008). In the absence of such an explanation the Court can draw inferences which may be unfavourable for the respondent Government (see, for instance, *Orhan v. Turkey*, no. 25656/94, § 274, 18 June 2002, and *Buntov v. Russia*, no. 27026/10, § 161, 5 June 2012).

(b) Application of these principles to the present case

141. The Court observes at the outset that the first applicant was detained from 31 July 2014 to 9 December 2015 and the second applicant was detained from 5 August 2014 to 12 November 2015. The medical evidence in the case file confirmed – and it was not disputed by the parties – that, when detained, the applicants had several serious medical problems. In particular, the first applicant suffered from chronic hepatitis C, type 2 diabetes, gallstones, a single cyst in the left kidney (measuring 0.91 cm) and pseudophakia (replacement of the natural lenses of the eyes with intraocular

lenses). The second applicant suffered from grade 3 chronic hypertension and hypertensive crisis with an increased risk of cardiovascular complications. However, contrary to the applicants' allegations, it does not appear from the medical evidence in the case file that the second applicant suffered from a type of grade 3 chronic hypertension leading to one of the three situations indicated in the List of Serious Illnesses Precluding the Detention of Prisoners (see paragraph 95 above). The Court thus notes that, although nothing suggests that these diseases were in principle incompatible with detention, it is clear that they required appropriate medical care on a regular, systematic and comprehensive basis.

142. In these circumstances, as in most cases concerning the detention of persons who are ill, the Court shall examine whether or not the applicants in the present case received adequate medical assistance in detention. The Court reiterates in this regard that the "adequacy" of medical assistance remains the most difficult element to determine. The mere fact that a detainee was seen by a doctor and prescribed a certain form of treatment cannot automatically lead to the conclusion that the medical assistance was adequate (see *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 116, 29 November 2007, and *Jeladze v. Georgia*, no. 1871/08, § 42, 18 December 2012). The authorities must also ensure that diagnosis and care are prompt and accurate (see *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, § 100, 27 January 2011) and that, where necessitated by the nature of a medical condition, supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at adequately treating the detainee's health problems or preventing their aggravation (see *Poghosyan v. Georgia*, no. 9870/07, § 59, 24 February 2009, and *Visloguzov v. Ukraine*, no. 32362/02, § 69, 20 May 2010). The authorities must also show that the necessary conditions were created for the prescribed treatment to be actually followed through (see *Hummatov*, § 116, and *Jeladze*, § 42, both cited above).

143. The Court observes that the applicants were immediately examined by a doctor and underwent various medical tests upon their admission to the detention facilities and that their diagnoses were prompt and accurate. However, it notes that, although the domestic authorities were aware of the applicants' poor health from the very beginning of their detention, it does not appear from the case file that they were provided with adequate medical treatment in detention.

144. In this connection, the Court firstly observes that during the first few months of her detention, from August to November 2014, the first applicant was examined only once on 19 August 2014 by a specialist endocrinologist, who advised her to continue her previous treatment against diabetes without making any further recommendations (see paragraph 51 above). In particular, although she suffered from chronic hepatitis C, she was not examined by a virologist. It appears that during that period the main

medical assistance provided to her by the detention facility medical unit was the transfer of the medication brought in by her friends and occasional examinations with the prison doctor when she complained about her state of health (see paragraph 62 above).

145. As to the adequacy of the first applicant's subsequent medical examinations by C.W. and the other doctors, it is clear from the documents in the case file that from 29 December 2014 she was regularly examined by C.W. and underwent various medical tests. However, the Court cannot consider on the basis of this fact alone that her medical treatment was adequate. In this connection, the Court firstly refers to its above-mentioned findings concerning the Government's failure to comply with the interim measure indicated by the Court on 30 September 2014 (see paragraphs 113-120 above). Moreover, when communicating this case, the Court also asked the Government to provide full information on the medical treatment received by the applicants in respect of all their health problems. However, neither the Court nor the applicants were provided with the medical prescriptions or recommendations made by C.W. or the other doctors following these medical examinations and the Government contented themselves with submitting an undated note signed by C.W., according to which the first applicant's medical examinations were conducted in compliance with international standards. No explanation was given by the Government for this failure. The Court also notes that these findings are also relevant to the second applicant's case. In fact, although the Government argued that the second applicant had been provided with adequate medical treatment throughout his detention, neither the Court nor the applicants were provided with any medical prescriptions or recommendations concerning his medical treatment in detention.

146. The Court considers that this failure on the part of the Government to provide the Court with full information on the medical treatment received by the applicants in respect of all their health problems deprived it of the ability to examine whether the treatment prescribed to the applicants in the present case was comprehensive therapeutic strategy aimed at adequately treating their health problems. It can therefore draw inferences from the Government's conduct and finds that the applicants were not provided with adequate medical treatment in detention. In this connection, the Court also considers it necessary to reiterate that the fact that the applicants were left without the relevant information in respect of their illnesses, and thus were kept in the dark about their state of health and deprived of any control over it, must have caused them perpetual anguish and fear (see *Testa v. Croatia*, no. 20877/04, § 52, 12 July 2007).

147. Furthermore, the Court cannot overlook the fact that the Government also failed to show that the necessary conditions were created for any medical treatment prescribed to the applicants to actually be followed through, except for the fact that the first applicant was provided

with a blood glucose meter in the detention facility. In particular, although it was clear in view of the nature of the applicants' illnesses that they should follow a diet, the Government failed to specify what kind of food the applicants had been provided in detention. In general, there is no indication that the applicants' detention environment was adapted to their state of health.

148. As regards the Government's argument relating to the first applicant's "bad faith", the Court notes that she did indeed refuse to be seen by the doctors on several occasions. However, it does not attach significant importance to that fact, taking into account that by that time more three months had elapsed of not being provided with adequate medical assistance in detention and that her refusal was a protest against this lack of medical assistance (see paragraph 144 above). Moreover, there was no indication that when she was examined by C.W. and the other specialists or underwent comprehensive medical examinations she refused to co-operate with the doctors. Accordingly, the Court cannot conclude that her refusal to accept medical treatment in such conditions could be interpreted as "bad faith" (see *Holomiov v. Moldova*, no. 30649/05, § 119, 7 November 2006).

149. As to the Government's argument that there was no deterioration in the applicants' health in detention, the Court observes that this argument is contradicted by the very fact that the applicants were transferred to the medical department of the Prison Service at the request of the doctors (see paragraph 85 above). Moreover, the second applicant was released from detention precisely on health grounds at the request of the medical department of the Prison Service. The Government also did not dispute the fact that the first applicant lost a considerable amount of weight during her detention. In any event, the Court points out that it is not necessary to show that a failure to provide requisite medical assistance led to a medical emergency or otherwise caused severe or prolonged pain to find that a detainee was subjected to treatment incompatible with the guarantees of Article 3. The fact that a detainee needed and requested such assistance but it was unavailable to him may, in certain circumstances, suffice to conclude that such treatment was degrading within the meaning of that Article (see *Davtyan v. Armenia*, no. 29736/06, § 88, 31 March 2015).

150. The Court thus finds that the applicants did not receive adequate medical treatment for their illnesses while in detention (see, *a contrario*, *Tymoshenko v. Ukraine*, no. 49872/11, §§ 214-219, 30 April 2013). It believes that, as a result of this lack of adequate medical treatment, they were exposed to prolonged mental and physical suffering diminishing their human dignity. The authorities' failure to provide them with the medical care they needed amounts to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

151. There has, accordingly, been a violation of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION CONCERNING THE FIRST APPLICANT'S ILL-TREATMENT IN PRISON BY A PRISON GUARD AND HER CELLMATE

152. The first applicant complained that she had been beaten by a prison guard on 23 September 2014 and subjected to verbal and physical violence by a repeat offender placed in her cell, and that the domestic authorities had not carried out an effective investigation in this respect. Article 3 of the Convention provides as follows:

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

153. The Government submitted that the first applicant had failed to exhaust domestic remedies in respect of her ill-treatment allegation. In particular, they pointed out that the Sabunchu District Prosecutor's Office had launched a criminal inquiry into the first applicant's alleged ill-treatment in prison and that on 22 October 2014 the investigator in charge of the case had refused to institute criminal proceedings for lack of evidence. However, the first applicant had never challenged this decision before the domestic courts.

154. The first applicant disagreed with the Government's submissions and maintained her complaint.

155. The Court observes that in the present case, following the first applicant's complaints to the domestic authorities and the publication in the media of information about her alleged ill-treatment in prison, the prosecution authorities launched a criminal inquiry. However, by a decision of 22 October 2014 the Sabunchu District Prosecutor's Office refused to institute criminal proceedings for lack of evidence to support the allegations. As with any decision by the prosecution authorities concerning a refusal to institute or to discontinue criminal proceedings, this decision was amenable to appeal before the domestic courts (see paragraph 93 above), however the first applicant did not appeal against this decision (see *Rzakhanov v. Azerbaijan*, no. 4242/07, § 82-84, 4 July 2013).

156. The first applicant did not state whether there were special circumstances in the present case which would dispense her from having to challenge the investigator's refusal to institute criminal proceedings. The Court reiterates that mere doubts about the effectiveness of a remedy are not sufficient to dispense with the requirement to make normal use of the available avenues for redress (see *Kunqurova v. Azerbaijan* (dec.), no. 5117/03, 3 June 2005).

157. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

158. 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

159. The applicants claimed 20,000 euros (EUR) each in compensation for non-pecuniary damage.

160. The Government submitted that the amount claimed by the applicant was unsubstantiated and excessive. They further submitted that EUR 10,000 would constitute reasonable compensation for the non-pecuniary damage allegedly sustained by the applicants.

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

B. Costs and expenses

162. The applicants claimed EUR 3,000 jointly for costs and expenses incurred before the Court. They also claimed a further EUR 1,902 for translation costs and 100 Azerbaijani manats for postage costs. In support of their claim, they submitted a contract for legal services rendered in the proceedings before the Court, a contract concluded with a translator and eight invoices for postage costs. They also supplied two documents detailing the specific legal and translation services provided by their representative and the translator.

163. The Government considered that the amount claimed for costs and expenses incurred before the Court was excessive. In particular, they submitted that the amount claimed for translation costs were not necessarily incurred and asked the Court to apply a strict approach in respect of the applicants' claims.

164. 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 4,000 covering costs under all heads.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention as regards the applicants' medical treatment in detention admissible and the remainder of the application inadmissible;

2. *Holds* that the respondent State has failed to comply with its obligations under Article 34 of the Convention;

3. *Holds* that there has been a violation of Article 3 of the Convention as regards the applicants' medical treatment in detention;

4. *Holds*
   (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
      (i) EUR 13,000 (thirteen thousand euros) to each applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 4,000 (four thousand euros) to the applicants jointly, plus any tax that may be chargeable to them, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* , unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 June 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Angelika Nußberger
Registrar	President